LAWYERS PRESS, INC., 165 WILLIAM STREET, NEW YORK CITY, N. Y.

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 417

THOMAS A. BALDWIN, THOMAS A. BALDWIN, EXECUTOR OF THE WILL OF CARRIE POOL BALDWIN, ET AL., ETC., PLAINTIFFS IN ERROR AND APPELLANTS,

vs.

STATE OF MISSOURI

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI

FILED SEPTEMBER 24, 1929

(34,548)

(34,548)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 417

THOMAS A. BALDWIN, THOMAS A. BALDWIN, EXECUTOR OF THE WILL OF CARRIE POOL BALDWIN, ET AL., ETC., PLAINTIFFS IN ERROR AND APPELLANTS,

vs.

STATE OF MISSOURI

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI

INDEX

	Original	Print
Proceedings in supreme court of Missouri	1	1
Caption (omitted in printing)	1	
Record from circuit court of Lewis County	2	1
Minute entry	2	1
Judgment	2	1
Minute entries	5	3
Motion for new trial	5	3
Order overruling motion for new trial	5	3
Order allowing appeal	5	3
Clerk's certificate (omitted in printing)	5	
Appellant's abstract of record	7	4
Petition	7	4
Record entries	17	9
Bill of exceptions	19	10
Caption	19	10

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 11, 1929

	Original	Print
Offers in evidence	19	10
Report of appraiser, probate court	20	11
Motion for order directing administrator to turn over property, probate court	24	14
Last will and testament of Carrie Pool Baldwin	25	15
Motion for new trial	27	16
Order overruling motion for new trial	29	16
Application for appeal and order granting same	30	18
Order settling bill of exceptions	31	18
Respondent's additional abstract of record	32	18
Minute entries, probate court	32	18
Order allowing appeal, probate court	33	19
Exhibit "A"—Inventory of estate	33	20
Appraiser's report	37	22
Receipt for payment of tax	43	27
Clerk's certificate	45	28
Argument and submission (omitted in printing)	46	
Judgment	47	29
Opinion, White, J.	48	30
Concurring opinion, Walker, J.	57	38
Motion for rehearing	68	47
Order denying rehearing	75	49
Petition for writ of error (omitted in printing)	76	
Order allowing writ of error (" " ")	79	
Citation and service (" " ")	81	
Writ of error (" " ")	81a	
Bond on writ of error (" " ")	82	
Præcipe for transcript of record	85	49
Clerk's certificate (omitted in printing)	86	
Petition for appeal, assignments of error, and prayer for reversal	88	50
Order allowing appeal	92	53
Citation and service (omitted in printing)	93	
Statement of points to be relied upon and designation of parts of record to be printed	95	54
Designation of additional parts of record to be printed	99	55

[Vol. 1] [Caption omitted]

[fol. 2]

IN CIRCUIT COURT OF LEWIS COUNTY

In Vacation—June 1, 1927

No. 12321

In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased

MINUTE ENTRY

Now at this day comes Jesse L. Brightwell, Judge and Clerk of the Probate Court and files transcript of proceedings of his court with clerk of the circuit court an appeal having been granted to the circuit court in the above entitled cause.

IN CIRCUIT COURT OF LEWIS COUNTY

In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased

JUDGMENT—Sept. 5, 1927

Now at this day some the parties hereto, the State of Missouri, by W. M. Hilbert, Prosecuting Attorney of Lewis County, Missouri, and comes appellant Thomas A. Baldwin, by his attorney of record herein, and comes Harry Carstarphen, administrator in said estate with will annexed, in person and by attorney, and the cause having heretofore been submitted to the court upon the pleadings and evidence in the cause and by the court taken under advisement, the court doth find that the deceased, Carrie Pool Baldwin, was at the time of her demise a non-resident of the State of Missouri; that the decedent at the time of her death owned land in the State of Missouri to the clear market value of [fol. 3] $55,380.00, and the court finds that under the laws of the State of Missouri said real estate so situated in this state is subject to the inheritance tax of the State of Mis-

souri at the rate provided by law and at the clear market value aforesaid, reduced by the lawful deductions hereinafter mentioned; the court further finds that decedent left no other tangible property in the state of Missouri; the court further finds that the intangible personal property consisting of deposits in banks in the state of Missouri and of promissory notes and bonds, under the law in such cases made and provided, are not subject to inheritance tax of the state of Missouri; the court further finds that the authorized lawful deductions are $19,919.29; the court further finds that the only heir and devisee of said Carrie Pool Baldwin is Thomas A. Baldwin, one of the appellants herein; the court further finds that the duly appointed, acting and qualified appraiser, Wm. R. Risk, was actually engaged five days in making the appraisement.

Now therefore it is ordered, adjudged and decreed that that portion of the report of Wm. R. Risk, the appraiser, and judgment of approval in the probate court of Lewis County, Missouri, which assesses or attempt to assess inheritance tax against the intangible personal property in said report and in said judgment, found to be of the clear market value of $85,898.09 be set aside and for naught held and that the assessment of said taxes is by the court declared to be without authority and void of no effect.

It is ordered and adjudged that the clear market value of the property, estate or interest referred to herein and in said appraiser's report, the transfer of which is subject to the tax imposed by law in such cases made and provided, the amount of said tax and the party liable therefor is as follows:

Name and address of Beneficiary: Thomas A. Baldwin, Quincy, Illinois; relationship: Son; real estate ($55,380.00 less $19,919.29); $36,460.71; legal exemption: $5,000.00; subject to tax: $30,460.71.

[fol. 4] Subject to tax	Rate	Amount of tax
$20,000.00	1%	$200.00
10,460.71	2%	209.22
		$409.22

It is further ordered and adjudged that said appraiser be allowed the sum of $25.00 for making said appraisement

and that said sum of $25.00 with $10.50 probate fees is taxed as costs against the person liable for said tax and as a lien against the interests of said person.

It is further ordered that said Harry Carstarphen, Administrator of said estate with will annexed, before making his final settlement, pay to the said appraiser the sum of $25.00 and said probate fees of $10.50; also pay to the treasurer of the State of Missouri, when due, the aforesaid tax, so assessed; Provided, there is sufficient money in his hands belonging to said Thomas A. Baldwin so taxed, or that may have been advanced by him to said Thomas A. Baldwin, with which to pay said tax and of said costs, and if said administrator have not such amount on hand then he be ordered to pay the same out of the proceeds of the sale of any property that may hereafter be ordered sold by this court to raise funds to make such payment. And it is ordered that this judgment and a copy hereof and the proceedings hereof in this court be certified to the probate court of Lewis county, Missouri, in the manner provided by law (particularly Section 291 R. S. 1919) and said probate court shall proceed and be governed accordingly.

[fols. 5 & 6] IN CIRCUIT COURT OF LEWIS COUNTY

[Titles omitted]

MINUTE ENTRIES

Sept. 7, 1927.

Now at this day comes the state of Missouri by Walter M. Hilbert, prosecuting attorney of Lewis County and files motion for new trial in the above entitled cause.

Now at this day motion for new trial is by the court overruled.

State by Prosecuting Attorney files application and affidavit for appeal and an appeal is by the court granted to the Supreme Court of Missouri. Leave to appellant to file bill of exceptions before or during next term of this court.

Clerk's certificate to foregoing papers omitted in printing.

[fol. 7] IN SUPREME COURT OF MISSOURI, en Banc, October Term, 1928

No. —

STATE OF MISSOURI, Appellant,

vs.

ESTATE OF CARRIE POOL BALDWIN, Deceased, Respondent

Appeal from the Circuit Court of Lewis County, State of Missouri, Honorable James A. Cooley, Judge

Appellant's Abstract of the Record—Filed May 7, 1929

APPELLANT'S PETITION

This case arises out of a proceeding in the probate court of Lewis County, Missouri, to assess inheritance taxes in the estate of Carrie Pool Baldwin, a resident of the State of Illinois at the time of her death.

After due notice had been given by the appraiser in this estate, who was appointed by the probate judge of Lewis [fol. 8] County, Missouri, wherein the property of the above named decedent, sought to be taxed, was located, said appraiser fixed the value on said property and appraised it on December the 16th, 1926. Exceptions to the appraiser's report were filed by Harry Carstarphen, administrator with will annexed. The probate court having made an order overruling such exceptions and approving the appraiser's report, the case was appealed by said administrator to the circuit court of Lewis County. The case was there tried and submitted on the basis of said exceptions filed in the probate court, which said exceptions (omitting caption) are in words and figures as follows:

"Now comes Harry Carstarphen, Administrator of the Estate of Carrie Pool Baldwin, deceased, with will annexed and comes also Thomas A. Baldwin, the sole devisee and legatee under the will of Carrie Pool Baldwin, deceased, he being also the sole and only heir of the said Carrie Pool Baldwin, deceased, and file this their exceptions to the report of the appraiser by the Probate Court appointed for the purpose of assessing inheritance tax in said estate.

"And your exceptor excepts to the report of the appraiser, Wm. R. Risk, filed in this court in the particulars herein specified:

[fol. 9] "To the appraisal and finding as to taxes on the items under description of property:

Bonds;

Cash in Bank;

All other personal property as enumerated in items 1 to 29, inclusive, to-wit:

Cash

1. Cash on deposit, Southeast Mo. Trust Co., Cape Girardeau, Mo.	$15,937.51
Cash on deposit, Advance Exchange Bank, Advance, Missouri	1,078.24

Bonds

27. $1,000 Reg. 4th Liberty Loan Bond, No. 20841, 4¼%	
28. $1,000 Reg. 4th Liberty Loan Bond, No. 20840, 4¼%	2,000.00

Promissory Notes

2. Note $4,100, 5/15/19, 7%; Due 5 yrs. Interest $349.39, Arthur A. Abernathy and Mayne W. Abernathy	4,449.39
3. Note $1,400-$900, Bal. $500, 8/21/20, 6%, Due 5 yrs. Interest $70.23, Edgar L. and Anita Crader	570.23
[fol. 10]	
4. Note $3,000, 5/15/19, 6%, Due 5 yrs. Interest $1,018.69, Thos, and Nola Huskey	3,000.00
5. Note $5,000, 3/26/21, 8%, Due 1 yr. Interest $688, E. B., Wm. and J. H. Jenkins	5,421.00
6. Note $2,621.60, 12/22/21, 6%, Due 5 yrs. Interest $628.31, Frank, Monral, Ira and Mattie Dunning	1,150.00
7. Note $1,000, 1/5/23, 6%, Due 5 yrs. Interest $116.80, John F. and Manda Cunningham	1,000.00

8. Note $5,500, 4/9/19, 7%, Due 5 yrs. Interest $625.31, J. W., L. R., Dollie and M. J. Robinson 6,125.00
9. Note $6,000, 3/24/21, 8%, Due 5 yrs. Interest $825.60, Thomas J. Cox 6,825.60
10. Note $5,000, 3/24/21, 8%, Due 5 yrs. Interest $688.00, Frank O. Cox 5,688.00

[fol. 11]

11. Note $4,000, 8/19/24, 8%, Due 5 yrs. Interest $407.42, Marion Leonard and Edna Cox 4,407.42
12. Note $1,500, 1/5/23, 6%, Due 5 yrs. Interest $185.40, Elijah and McCarthor Smith 1,500.00
13. Note $2,792.80-$440, Bal. $2,352.80, 11/16/21, 6%, Due 5 yrs. Interest $533.48, John F. and Lille E. Smtih 2,352.80
14. Note $1,700, 11/9/18, 6%, Due 5 yrs. Interest $102.00, C. O. Wiggins and Elizabeth Wiggins 1,802.00
15. Note $690, 10/21/25, 6%, Due 5 yrs. Interest $41.40, Jeff D. and Mary Riley 731.40

Note $1,000, 10/21/25, 6%, Due 5 yrs. Interest $60.00, Jeff D. and Mary Riley 1,060.00

16. Note $1,000-$500, Bal. $500, 4/11/16, 6%, Due 5 yrs. Interest $30.00 payable to J. H. and G. A. Richardson, by C. O., Elizabeth and J. A. Wiggins 530.00

[fol. 12]

Note $1,000, 4/11/16, 6%, Due 4 yrs. Interest $262.48. Payable and signed as above 1,060.00

17. Note $3,000, 1/5/18, 8½%, Due 7 yrs. Interest $456. Payable to E. D. Hoffman, by Saml. B. and Martha I. Bedwell 3,000.00

Note $195, 1/5/18, 8%, Due 7 yrs. Interest $29.65 (Pd.). Payable and signed as above.

18. Note $1,500, 3/12/19, 6%, Due 2 yrs. Interest $160.21, Payable to S. G. Bedwell by J. J. and Mary E. Wilkinson 1,660.00
19. Note $1,300, 3/1/25, 6%, Due 5 yrs. Interest $137.17, J. J. Wilkinson 1,437.00

20. Note $300-$47.50, Bal. $252.50, 2/27/25, 8%, Due 1 yr. Interest $16.59, J. J. Wilkinson and Mary E. Wilkinson	252.50
21. Note $2,500, 2/1/18, 6%, Due 2 yrs. Interest $125, M. E. Leming Lumber Co., by M. E. Leming	2,625.00
[fol. 13]	
Note $2,500, 2/1/18, 6%, Due 4 yrs. Interest $125, M. E. Leming Lumber Company, by M. E. Leming	2,625.00
Note $2,500, 2/1/18, 6%, Due 5 yrs. Interest $125, M. E. Leming Lumber Co., by M. E. Leming	2,625.00
22. Note $1,000-$400, Bal $600, 1/12/23, 6%, Due 5 yrs. Interest $36, Mr. E. Leming Lumber Co	636.00
23. Note $2,000-$800, Bal. $1,200, 1/12/23, 6%, Due 5 yrs. Interest $72, M. E. Leming Lumber Co	1,272.00
24. Note $2,000-$400, Bal. $1600, 1/12/23, 6%, Due 5 yrs. Interest $96, M. E. Leming Lumber Co	1,696.00
25. Note $1,500-$400, Bal. $1100, 12/28/22, 6%, Due 5 yrs. Interest $66, M. E. Leming Lumber Co., by M. E. Leming	1,166.50
26. 3 Notes $50-$50-$25, 1/28/26, Due 6-9-12/1/26, Interest $3.00, B. H. Ramsey	125.00
[fol. 14]	
29. Note $90, 1/1/26, 8%, Due 11/30/26, Interest $6.60, John Dunning, Mr. & Mrs. F. B. Dunning and C. H. Schuehuff	90.00

"Your exceptor avers and shows that Carrie Pool Baldwin, deceased, was a non-resident of the State of Missouri at the time of her death; that she passed away in the State of Illinois; that said items hereinabove set out are intangible personal assets owned by a non-resident and the Situs of the property was in the State of Illinois at the time of the demise of said Carrie Pool Baldwin, deceased, and has so remained; that the State of Missouri has no jurisdiction over said personal property for the purpose of imposing inheritance taxes; that the action of appraiser in apprais-

ing said property and submitting for inheritance tax assesment thereon is void and of no effect;

"That Item No. 1 herein set out represents money on deposit in Missouri banks of a non-resident; that it is money owed to a non-resident and that it is a debt, the situs of which is with the creditor;

"That items Nos. 2, 3, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, [fol. 15] 18, 19, 22, 24, and 25, are notes secured by real estate situate in Bollinger and Stoddard Counties, and payable to Carrie Pool Baldwin, deceased, a non-resident of the State of Missouri;

"That items Nos. 4 and 7 are notes secured by land situate in Bollinger County, payable by non-residents to a non-resident of the State of Missouri;

"That items Nos. 5, 20, 21, 26 and 29, are unsecured notes payable to a non-resident of the State of Missouri; and

"That items 27 and 28 are government bonds owned by a non-resident of the State of Missouri.

"Your exceptor further states that said appraiser and said Probate Court are without any authority, power and jurisdiction in the premises as aforesaid, for the reason that the legislative enactment of the State of Missouri providing for inheritance tax, in pursuance of which the said appraiser and said Probate Court proceeded in the premises does not and cannot include intangible personal property of a non-resident of the State of Missouri, and evidenced by notes and other instruments found in the State of Missouri, or if said act is construed to include and undertakes to assess and collect inheritance taxes on trans- [fol. 16] fer of property from one non-resident of the State of Missouri to another non-resident of the State of Missouri, which said property is intangible, then said act is unconstitutional, void and of no effect.

"1. Section 1 of the 14th Amendment of the Constitution of the United States, in that said act then (1) deprives the transferee and other persons of property without due process of law; and (2) denies to transferee and other persons the equal protection of law; (3) effort of one state to undertake to abridge the privileges and immunities of citizens of the United States.

"2. Section 2, Article 4 of the Constitution of the United States, in that said act is in violation of act guaranteeing the citizens of each state all privileges and immunities of citizens in the several states.

"3. Section 30, Article 2, of the Constitution of Missouri, provides that no person shall be deprived of property without due process of law.

"Wherefore your exceptor prays the Court to sustain the foregoing exceptions and to eliminate in his order all consideration and assessment of taxes against said intangible [fol. 17] personal property herein specified and enumerated.

(Signed) Harry Carstarphen, Administrator of the Estate of Carrie Pool Baldwin, Deceased, with will annexed, and Thomas A. Baldwin, by John F. Garner Attorney."

Filed May 23, 1927. Jesse L. Brightwell, Judge and Clerk of Probate Court.

RECORD ENTRIES

May 23, 1927.—Report of duly appointed appraiser. After due notice had been given, appraisal was made in the estate of Carrie Pool Baldwin.

May 23, 1927.—Motion was filed by the executor of Carrie Pool Baldwin asking that the court order the administrator to turn over to him all personal intangible property in the estate of decedent; motion overruled.

May 24, 1927.—Report of appraiser approved by the probate court and inheritance tax assessed. Exceptions to report filed by administrator and by the sole devisee and legatee; exceptions overruled.

May 24, 1927.—Appeal to circuit court of Lewis County taken by the administrator of the estate of Carrie Pool Baldwin.

[fol. 18] June 1, 1927.—Appeal to the circuit court allowed.

June 1, 1927.—The clerk of the probate court of Lewis County certified to the circuit court of said county a true, full and complete transcript of the record and proceedings

had in said probate court in the matter of the assessment of transfer and inheritance tax in the estate of Carrie Pool Baldwin.

March Term, 1927.—Case submitted to the circuit court.

September 5, 1927.—Judgment entered by the circuit court setting aside that part of the appraiser's report which assessed inheritance tax against the intangible personal property of Carrie Pool Baldwin.

September 7, 1927.—Motion for new trial was filed by the State of Missouri; overruled.

September 7, 1927.—Appeal filed by the State of Missouri to the Supreme Court of Missouri; appeal granted.

April 24, 1928.—Appellant's bill of exceptions allowed, signed, sealed, filed and ordered made a part of the record.

[fol. 19] **Bill of Exceptions**

CAPTION

Be it remembered, That heretofore, to-wit, on the 20th day of June, 1927, the same being one of the days of the March Adjourned Term, 1927, of the Circuit Court of Lewis County, Missouri, the above entitled cause came on for hearing before the Honorable James A. Cooley, Judge of said Court, upon the pleadings heretofore filed herein, and the issued joined.

Whereupon the following proceedings were had and testimony taken, to-wit:

Appearances: Walter M. Hilbert, Prosecuting Attorney of Lewis County, Mo., appearing for the State; John F. Garner, Esq., and Harry Carstarphen, Esq., appearing for the Estate.

Appellant's Evidence

Appellant (Administrator with will annexed in the estate of Carrie Pool Baldwin was appellant from the probate court to the circuit court), to sustain the issues on his part, offered and introduced evidence as follows, to-wit:

OFFERS IN EVIDENCE

Appellant offered in evidence the transcript which was brought up from the probate court. Included in said tran-
[fol. 20] script was the report of the appraiser, which said report is as follows:

"In the Probate Court of Lewis County, Missouri

No. —

"In the Matter of the Appraisal of the Estate of Carrie Pool Baldwin, Deceased

Under an Act Providing for a Tax on Transfers by Gift, Inheritance, etc.

"Above named decedent, a legal resident of Quincy, County of Adams, State of Illinois, died testate October 4th, 1926, at Quincy, Illinois, Foreign Letters of Administration with will annexed were issued on the estate of said decedent October 22nd, 1926, to Harry Carstarphen of Fisher Building, Hannibal, Missouri.

"Report of Appraiser

"To the Hon. Jesse L. Brightwell, Probate Judge:

"The undersigned, having been on the 2nd day of December, 1926, by order of the Judge of this Court, duly appointed appraiser, directed to fix and determine the valuation of the property of the above named decedent, at its clear market value at the time of decedent's death, in pur-
[fol. 21] suance of an Act Providing for a Tax on Transfers of Property by Gift, Inheritance, etc., Approved April 12, 1917, Laws of Missouri, 1917, page 114, respectfully reports:

"That pursuant to said act he duly took and subscribed the oath prescribed thereby and filed the same as therein provided.

"That he did on the 16th day of December, at 10 o'clock A. M., at Courthouse in Monticello, Missouri, proceed to fix such valuation, first having given at least ten days' notice to this Court by notice filed herein, and notice by mail, postage prepaid, to all interested persons whose address he had or could obtain, including C. Eugene Stephens, the Treasurer of the State of Missouri, and Barker Davis, the Prosecuting Attorney of Lewis County, Missouri, of the time and the place where such valuation would be fixed.

"That at said time and place the following persons, in interest, were in attendance, to-wit: Thos. A. Baldwin, John T. Garner and Harry Carstarphen.

"That at said time and place and at other and subsequent times and divers places to which these proceedings were regularly adjourned, he did appraise at the clear market value as of the date of decedent's death all property of which the said decedent died possessed, as follows:

[fol. 22] Deductions

Appraiser should list proper deductions under following heads: 1, Lawful Debts; 2, Real Estate Mortgages; 3, Taxes; 4, Expenses of Administration.

Debt or claim of	Nature of claim	Amount
Elmer Osborne	Allowed claim	$90.00
Collector of Lewis Co	Taxes for 1926	91.10
Collector of Lewis Co	Taxes for 1927 estimated	91.10
Collector of Bollinger Co	Taxes for 1926	6,404.10
Collector of Bollinger Co	Taxes for 1927 estimated	6,404.10
Collector of Stoddard Co	Taxes for 1926	67.62
Collector of Stoddard Co	Taxes for 1927 estimated	67.62
Cost of Administration		6,702.65
Total		$10,919.29

Recapitulation

Gross market value of estate:

Cash	$17,015.75
Bonds and mortgages	2,000.00
Stocks and other securities	None
Notes, claims and open accounts	66,882.34
Insurance policies and benefit certificates	None
Household effects and other chattels	None
Real estate	55,380.00
Total	$141,278.09

Deductions:

Amount of all known lawful debts, except real estate mortgages	90.00
Real estate mortgages	None
General and special State, County and Municipal taxes due or to become due	13,125.64
All necessary expenses of administration	6,703.65
Total	$19,919.29
Clear net market value of estate	$121,358.80

Which said clear, net estate is subject to distribution as follows:

[fol. 23]

Name and address of beneficiary	Relationship	Value of interest of each in property transferred: Real estate	Value of interest of each in property transferred: Personal property	Annuities, life estates and terms of years	Total value interest of each	Amount legal exemption of each	Value of Interest or property of each subject to tax	Rate	Amount of tax
Thos. A. Baldwin, Quincy, Illinois.....	Son	$55,380.00	$65,978.80	None	$121,358.80	$5,000.00	$116,358.80	...	.....
							20,000.00	1%	$200.00
							20,000.00	2%	400.00
							40,000.00	3%	1,200.00
							36,358.80	4%	1,454.35
									$3,254.35

"All of which is respectfully submitted, in duplicate, this 23 day of May, 1927.

(Signed) Wm. R. Risk, Appraiser.

[fol. 24] "I hereby certify that the foregoing is a duplicate of the report filed in this cause on the 23 day of May, 1927, by Wm. R. Risk, duly appointed appraiser herein, at the time and for the purposes in said report set out.

"Witness my hand and seal this 23 day of May, 1927.

(Signed) Jesse L. Brightwell, Judge or Clerk Probate Court, Lewis County, Missouri."

Appellant next offered in evidence a motion filed in the Probate Court; said motion which was filed and overruled by the Circuit Court is as follows:

"STATE OF MISSOURI,
County of Lewis, ss:

IN THE CIRCUIT COURT OF LEWIS COUNTY, MISSOURI, MARCH TERM, 1927

"In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased, HARRY CARSTARPHEN, Administrator, with Will Annexed

"Now comes Thomas A. Baldwin, the duly qualified and acting executor of the will of Carrie Pool Baldwin, deceased, in the State of Illinois, and Thomas A. Baldwin, as the only heir and devisee of Carrie Pool Baldwin, deceased, and moves the court to make an order and finding of record herein directing Harry Carstarphen, administrator with will annexed in the estate of Carrie Pool Baldwin, deceased, to turn over to the executor of the will of Carrie Pool Baldwin, deceased, all intangible personal property in his hands situated, which embraces items Nos. 1 to 29, inclusive, as described in inventory and appraisement of said administrator with will annexed, filed in Probate Court on the 16th day of December, 1926, for the reason that said adminis- [fol. 25] trator, through color of his office created by this court, holds said property and has inventoried same contrary to the law, and assigns as reasons therefor:

"That all of said personal property identified and enumerated in said inventory and appraisement is personal property and was at the time said administrator took it intangible personal property owned by a non-resident of the State of Missouri, to-wit: Carrie Pool Baldwin, deceased,

whose residence controls the situs of the property, and such evidence of indebtedness as may be in the hands of the administrator should be forthwith turned over to the executor of the will of Carrie Pool Baldwin, deceased, in the State of Illinois, the residence of said Carrie Pool Baldwin, deceased.

(Signed) Thomas A. Baldwin. Thomas A. Baldwin, Executor, by John F. Garner, Attorney."

Appellant next offered in evidence the last will and testament of Carrie Pool Baldwin, which reads as follows:

"I, Carrie Pool Baldwin, being of sound and disposing mind and memory and yet mindful of the uncertainty of life, [fol. 26] do hereby make the following as and for my last will and testament, hereby revoking all former wills by me heretofore executed.

"First. I direct that my funeral expenses and all just debts be fully paid.

"Second. All the rest, residue and remainder of my estate, whether real, personal or mixed, and whether owned by me now or acquired by me hereafter. I hereby give, devise and bequeath to my son Thomas A. Baldwin, absolutely and forever.

"Third. I hereby appoint my said son Thomas A. Baldwin executor of this my last will and testament, and request that he be not required to give any security on his bond as such executor.

"In witness whereof, I have hereunto set my hand and seal this second day of August, A. D. 1926.

Carrie Pool Baldwin. (Seal.)"

"I might suggest this point: That as to the real estate, there is no contention. This appeal, in order to carry any of it, had to carry it all, because it is all made in one order; the Court deeming his authority not such as he could divide it—that is, the Probate Court—and make two separate orders as to the real estate and personal property."

Whereupon appellant rested in chief.

[fol. 27] (Note.—The Judgment of the Circuit Court of Lewis County is shown on page 2 of the transcript.)

STATE'S MOTION FOR NEW TRIAL

"And thereafter, to-wit, on the 7th day of September, 1927, and within four days of the redition of the finding and judgment in this cause, and at the same term said finding and judgment were rendered, the State, by its counsel, filed its Motion for a New Trial in said cause. Said Motion for a new trial filed by the State as aforesaid, is herewith copied, made a part hereof, and is in words and figures as follows:

[fol. 28] IN THE CIRCUIT COURT OF LEWIS COUNTY, MISSOURI

"In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased, Harry Carstarphen, Administrator with Will Annexed

"Motion for New Trial

"Now this day comes the Plaintiff, State of Missouri, by Walter M. Hilbert, Prosecuting Attorney of Lewis County, Missouri, and moves the Court to set aside the verdict and judgment rendered in the above entitled cause on the 5th day of September, 1927, and to grant it a new trial therein for the following reasons:

"1. That upon the record said judgment is erroneous.

"2. That the judgment was for the wrong party.

"3. Because the judgment in said cause is against the evidence, against the weight of the evidence, and against the law under the evidence.

"4. Because the Court erred in rendering judgment in said cause for the defendant.

(Signed) Walter M. Hilbert, Prosecuting Attorney for Lewis County, Missouri."

[fol. 29] Motion for New Trial Overruled, Affidavit for Appeal Filed, and Appeal Granted

"Motion for a New Trial Overruled

"And thereafter, to-wit, on the 7th day of September, 1927, the Court having duly seen, heard and considered

said Motion for a New Trial filed by the State as aforesaid, doth overrule the same.

"And to the action of the Court in overruling said Motion for a New Trial, the State, by its counsel, at the time excepted and saved its exceptions.

"Application and Affidavit for an Appeal

"And thereafter, and on the same day, to-wit, the 7th day of September, the State, by its counsel, filed in said court in said cause its application and affidavit for an appeal.

"Said Application and Affidavit for an Appeal, filed by the State as aforesaid, is as follows, to-wit:

[fol. 30] IN THE CIRCUIT COURT OF LEWIS COUNTY, MISSOURI

"STATE OF MISSOURI,
County of Lewis, ss:

"In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased, HARRY CARSTARPHEN, Administrator with Will Annexed

Affidavit for Appeal

"Walter M. Hilbert, Prosecuting Attorney of Lewis County, Missouri, being duly sworn, says that the appeal from the order of the Circuit Court of Lewis County, Missouri, denying the assessing of the Transfer Tax or Inheritance Tax in the above.

"Appeal Granted

"And the Court having duly seen, heard and considered said Application and Affidavit for an Appeal, filed by the State as aforesaid, doth grant it an appeal as prayed for to the Supreme Court of the State of Missouri, at Jefferson City, and doth grant the State leave to file its Bill of Exceptions taken and saved in this cause before or during the next term of this Court.

[fol. 31] ORDER SETTLING BILL OF EXCEPTIONS

"Certificate

"And now, within the time allowed by law for filing Bill of Exceptions in this cause, comes the State, by its counsel, and presents this, its Bill of Exceptions taken and saved in this cause, and prays that the Court sign, seal, allow, settle and order the same to be filed and made a part of the record in this cause.

"Which is accordingly done this 24th day of April, 1928.
James A. Cooley, Judge of the Circuit Court of Lewis County, Missouri."

Transcript Filed

On the — day of ——, 1928, appellant (the State of Missouri), caused to be filed in this court a certified copy of the judgment of the court below showing the term and date on which the same was rendered, together with a certified copy of the order allowing the appeal with a like showing with reference hereto.

[fol. 32] IN SUPREME COURT OF MISSOURI

Respondent's Additional Abstract of Record—Filed April 11, 1929

PROBATE COURT OF LEWIS COUNTY, MISSOURI, OCTOBER 22ND, 1926

(Book 32, Page 96)

In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased

MINUTE ENTRIES

A certified copy of the will of Carrie Pool Baldwin proved and admitted to probate in Adams County, Illinois, duly filed and admitted to probate in Lewis County, and ordered to be recorded.

On application Harry Carstarphen is appointed administrator with will annexed—and ancillary letters of administration granted to said Harry Carstarphen.

And thereupon he tendered bond as such administrator with will annexed—which said bond is by the court examined, approved and ordered filed and recorded, and letters of administration with will annexed are ordered granted and issued to him.

On this day there is filed herein and offered for record an instrument of writing purporting to be the duly authenticated copy of the last will and testament of Carrie Pool Baldwin, deceased, late of the County of Adams, and State of Illinois, as proved and admitted to probate in said county and state, and the court, having examined same and the proofs and certificates hereto attached, finds that the same was executed and proved according to the laws of this state and now admits the same to record herein in the same manner as wills executed and proved in this state.

[fol. 33] PROBATE COURT LEWIS COUNTY, MISSOURI, JUNE 1st, 1927

(Book 32, Page 184)

In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased

ORDER ALLOWING APPEAL

Now comes Harry Carstarphen, administrator with will annexed of the estate of Carrie Pool Baldwin, deceased, and Thomas A. Baldwin, sole devisee and legatee under the will, and the only heir of Carrie Pool Baldwin, deceased, and file herein their affidavit and pray to be permitted to appeal to the Circuit Court of Lewis County, Missouri, from the judgment of this court of the 23rd day of May, 1927, finding and assessing transfer and inheritance tax, and file herein their appeal bond in the sum of $7000.00, with the Fidelity & Casualty Company of New York as surety thereon, which bond is by the court approved and ordered that such appeal be allowed to said circuit court and that the clerk hereof make and certify to said circuit court a copy of the records herein pertaining

to said cause, and attach thereto the original papers in this case.

(Order follows: Penalty and interest waived until cause is finally determined.)

CIRCUIT COURT RECORDS OF LEWIS COUNTY, MISSOURI

(Book 30, Page 88)

No. 12321

In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased

John F. Garner noted as attorney for Thomas A. Baldwin as executor of the estate of Carrie Pool Baldwin in State of Illinois and for Thomas A. Baldwin.

Thomas A. Baldwin, executor, files motion to turn over to executor certain personal property, which motion is by the court overruled.

EXHIBIT A

STATE OF ILLINOIS,
Adams County, ss:

In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased

The following is a full and perfect inventory of all the real and personal estate of said deceased, so far as the same [fol. 34] has come to the possession or knowledge of the undersigned Thomas A. Baldwin, executor of the last will and testament of Carrie Pool Baldwin, deceased.

The following is a full and perfect inventory of all the real and personal estate of said deceased, so far as the same has come to the possession of the undersigned within the State of Illinois.

Real Estate

(Here follows description of the real estate in the State of Illinois.)

Chattel Property

(Liberty bonds, old coins, jewelry, cash in Quincy-Ricker National Bank.)

The following is a full and perfect inventory of all real and personal estate of said deceased, so far as the same has come to the knowledge of the undersigned, and all being located in the State of Missouri, and in the possession of Harry Carstarphen, administrator with the will annexed in said estate within and for the State of Missouri:

Real Estate

(Description of real estate situated in the State of Missouri, as set out in Abstract of Record, pages 23 and 24.)

[fol. 35]

Chattel Property

Cash on deposit in Southeast Missouri Trust Company, at Cape Girardeau, Missouri	$15,937.51
Cash on deposit in Advance Bank, at Advance, Missouri	1,078.24
Two U. S. Liberty bonds of $1,000.00 each	2,000.00
Received cash from Abernathy loan	4,449.39

Notes and Accounts

	Date	
Edgar L. Crader and Amtar Pearl Crader	Aug. 21, 1920 6% Good	$500.00
Thomas Huskey, Jr. and Nora Huskey	May 15, 1919 6% Good	3,000.00
E. V. Jenkins, William Jenkins & J. H. Jenkins	Mar. 26, 1921 8% Doubtful	5,000.00
Frank Dunning, Monrold Dunning, Ina Dunning, Mattie Dunning	Dec. 22, 1921 6% Doubtful	1,150.00
John T. Cunningham & Amanda Cunningham	Jan. 5, 1923 6% Good	1,000.00
J. W. Robinson, L. R. Robinson, Dollie Robinson, M. J. Robinson	Apr. 9, 1919 7% Good	5,500.00
Thomas I. Cox	Mar. 24, 1921 8% Good	6,000.00
Frank D. Cox	Mar. 24, 1921 8% Good	5,000.00
Marion Leonard Cox & Edna Cox	Aug. 19, 1924 8% Good	4,000.00

	Date	
[fol. 36] Elijah L. Smith, McArthur Smith	Jan. 5, 1923	6% Good 1,500.00
John F. Smith & Lillie E. Smith	Nov. 16, 1921	6% Good 2,352.80
C. O. Wiggins and Elizabeth Wiggins	Nov. 9, 1918	6% Good 1,700.00
Jeff D. Riley & Mary Riley	Oct. 21, 1925	6% Doubtful 690.00
Jeff D. Riley & Mary Riley	Oct, 21, 1925	6% Doubtful 1,000.00
C. O. Wiggins, Elizabeth Wiggins, J. A. Wiggins,	Apr. 11, 1916	6% Good 500.00
C. O. Wiggins, Elizabeth Wiggins, J. A. Wiggins	Apr. 11, 1916	6% Good 1,000.00
Samuel B. Bedwell, Martha I. Bedwell	Jan. 5, 1918	6½% Good 3,000.00
J. J. Wilkinson, Mary E. Wilkinson,	Mar. 12, 1919	6% Doubtful 1,500.00
J. J. Wilkinson	Mar. 1, 1920	6% Doubtful 1,300.00
J. J. Wilkinson & Mary Wilkinson	Feb. 27, 1925	8% Doubtful 252.50
M. E. Leming Lbr. Co.	Feb. 1, 1918	6% Good 2,500.00
M. E. Leming Lbr. Co.	Feb. 1, 1918	6% Good 2,500.00
M. E. Leming Lbr. Co.	Feb. 1, 1918	6% Good 2,500.00
M. E. Leming Lbr. Co.	Jan. 12, 1923	6% Good 600.00
[fol. 37] M. E. Leming Lbr. Co.	Jan. 12, 1923	6% Good 1,200.00
M. E. Leming Lbr. Co.	Jan. 12, 1923	6% Good 1,600.00
M. E. Leming Lbr. Co.	Dec. 28, 1922	6% Good 1,100.00
B. H. Ramsey	Jan. 28, 1926	8% Desperate 50.00
B. H. Ramsey	Jan. 28, 1926	8% Desperate 50.00
B. H. Ramsey	Jan. 28, 1926	8% Desperate 25.00
John Dunning, Mr. and Mrs. F. B. Dunning and C. H. Schuehuff	Jan. 1, 1926	8% doubtful 90.00

I do hereby certify that the above is a correct inventory of the real and personal estate of Carrie Pool Baldwin, deceased.

Given under my hand this 28th day of January, A. D. 1927.

Thomas A. Baldwin, Executor as Aforesaid.

ADAMS COUNTY,
State of Illinois:

No. —

In the Matter of the Estate of CARRIE POOL BALDWIN, Deceased

Transfer Tax

To the Honorable Charles G. Nauert County Judge of said County:

The undersigned Charles L. Bartlett, Appraiser in said matter, appointed by an order entered by Your Honor as [fol. 38] County Judge of said County on the 13th day of October, A. D. 1926, respectively reports:

First. (1) That on the 15th day of October, A. D. 1926 he gave notice by mail to all persons known to have or claim an interest in the property of said estate, including the Attorney General, and such persons as Your Honor directed, of the time when and the place where he would proceed to take the evidence and appraise such property, a certificate of service of which notice, or waiver of notice, is hereto attached and made a part of this report.

Second. That on the 20th day of October A. D. 1926 at the hour of ten o'clock A. M., and thereafter from time to time pursuant to adjournments regularly had, at Quincy in the County of Adams and State of Illinois, he proceeded to take the evidence and deposition of the several witnesses examined under oath concerning said estate and property, and to appraise the fair cash value thereof at the time of the death of the said decedent, which evidence and depositions are hereto attached and made a part of this report.

Third. That the following appearances were made before me in these proceedings, in person, by attorney or by guardian, as follows:
Thomas A. Baldwin, executor, by John F. Garner, his attorney.

Fourth. That all of said persons interested in said estate are of full age and not under any disability.

[fol. 39] Fifth. That the State was represented by Mr. Lee Capps, Inheritance tax attorney.

Sixth. That said Carrie Pool Baldwin died on the 4th day of October A. D. 1926, testate, a resident of Adams County and that on the 8th day of October A. D. 1926 letters testamentary were duly issued by the County of said Adams County, Illinois, to Thomas A. Baldwin as executor of her will.

Seventh. That he finds that the fair cash market value of said property at the time of death of decedent was as follows:

Real Estate

(Recital and appraisal of real estate situated in the State of Illinois. Total appraised value $30,675.00.)

Chattel Property

(Certain chattel property situated in the State of Illinois.)

Cash on deposit in Southeast Missouri Trust Company of Cape Girardeau, Mo	15,937.51
Cash on deposit in Advance Bank of Advance Mo.	1,078.24
Two U. S. Liberty loan bonds of $1000 each	2,000.00
Proceeds of Abernathy loan	4,449.39
Note of Edgar L. and Anita Crader, prin. $1,400, credit $900, balance $500, accrued int. $70.23, appraised value	570.23
[fol. 40]	
Note of Thomas and Nola Huskey, prin. $3,000, accrued int. $1018.69, app, v.	3,000.00
Note of E. B. Jenkins, Wm. Jenkins and J. H. Jenkins, prin, $5000, accrued int. $688, appraised value	5,421.00
Note of Frank Dunning, Monral Dunning, Ira Dunning and Mattie Dunning, prin. $2,621.60, accrued int. $628.31, appraised value	1,150.00
Note of John F. Cunningham and Manda Cunningham, prin. $1000, accrued int. $116.80, appraised value	1,000.00

Note of J. W. Robinson, L. R. Robinson, Dollie Robinson and M. J. Robinson, prin. $5500, accrued int. $625.31, appraised value	6,125.00
Note of Thomas J. Cox, prin. $6,000, accrued int. $825.60, appraised val	6,825.60
Note of Frank Cox, prin. $5,000, accrued int. $688, appraised value	5,688.00
Note of Marion Cox, Leonard Cox, and Edna Cox, prin. $4,000, accrued int. $407.42, appraised value	4,407.42
Note of Elijah and McArthur Smith, prin. $1,500, accrued int. $185.40	1,500.00
Note of John F. and Lillie E. Smith, prin $2,792.00, credit $440, balance $2,352.80, accrued int. $533.48, appraised value	2,352.80
[fol. 41]	
Note of C. O. and Elizabeth Wiggins, prin. $1700, accrued int. $102	1,802.00
Note of Jeff D. Riley and Mary Riley, prin. $690, accrued int. $41.40	731.40
Note of Jeff D. Riley and Mary Riley, prin. $1,000, accrued int. $60	1,060.00
Note of C. O. Wiggins, Elizabeth Wiggins and J. A. Wiggins, prin. $1,000, paid $500, accrued int. $30.00, appraised value	530.00
Note of C. O. Wiggins, Elizabeth Wiggins and J. A. Wiggins, prin. $1,000, accrued int. $262.48, appraised value	1,060.00
Notes of Samuel B. Bedwell and Martha I. Bedwell, one for $3,000, accrued int. $456, and one for $105, accrued int. $29.65, app. val.	3,000.00
Note of J. J. and Mary Wilkinson, prin. $1,500, accrued int. $160.21, a. v.	1,660.00
Note of J. J. Wilkinson, prin. $1,300, accrued int. $137.17, app. val.	1,437.00
Note of J. J. Wilkinson and Mary Wilkinson, prin. $252.50, accrued int. $16.59, appraised value	252.50
Note of Leming Lumber Co. prin. $2,500, accrued int. $125, app. val.	2,625.00
Note of M. E. Leming Lumber Co. prin. $2,500, accrued int. $125, app. val.	2,625.00

Note of M. E. Leming Lbr. Co. prin. $2,500, accrued int. $125, app. val.	2,625.00
[fol. 42] Note of M. E. Leming Lbr. Co. prin. $1,000, paid $400, bal. $600, app. val.	636.00
Note of M. E. Leming Lbr. Co. prin. $2,000, paid $800, bal. $1,200, accrued int. $72, appraised value	1,272.00
Note of M. E. Leming Lbr. Co. prin. $2,000, paid $400, bal. $1,600, accrued int. $96, appraised value	1,196.00
Note of M. E. Leming Lbr. Co. prin. $1,500 paid $400. Bal. $1,100, accrued int. $66 appraised value	1,166.00
3 notes of B. H. Ramsey for $50, $50 and $25, accrued int. $3, app. val.	125.00
Note of John Dunning, Mr. and Mrs. F. B. Dunning and C. H. Schuehuff, prin. $90, accrued int. $6.60, appraised value	90.00
Note of J. L. Speer for $20, accrued int. $4.47, appraised value	Worthless.
Note of J. L. Speer for $20.75, accrued int. $4.42, appraised value	Worthless.
Total	$101,979.19

(Here appears recital on deduction for recovery on damage suit in Illinois.)

Total amount of estate		$132,656.19
Total amount of debts to be deducted	$1,822.59	
Cost of administration, not including Transfer taxes	9,218.86	
Total deduction	$11,401.45	$11,041.45
Net value of estate		$121,614.74

[fol. 43] Ninth. That the name of each beneficiary, address, relation to deceased, value of property received, exemption, net amount subject to Transfer Tax, rate of taxation, and amount of tax due from each are set forth in the following table:

Thomas A. Baldwin, Quincy, Illinois.
Son. Adult.
Item 2 of Will, sole beneficiary.
Value received, $121,614.74.
Exemption, 20,000.00.
Subject to Tax, 101,614.74.

	Rate	Amount of tax
50,000.00	2%	1,000.00
51,614.74	4%	2,064.59
Total amount of tax due state		$3,064.59

(Service statement, expense statement and certificate of Appraiser, Charles L. Bartlett, of Adams County, Illinois.)

(Order of Judge of County Court approving tax appraisement of Charles L. Bartlett.)

Office of the County Treasurer of Adams County, Illinois

No. —

In the Matter of the Estate of Carrie Pool Baldwin, Deceased

Transfer Tax

Received of Thomas A. Baldwin, sole beneficiary of the Estate of Carrie Pool Baldwin, Deceased, twenty-nine hun- [fol. 44] dred eleven & 37/100 Dollars, being payment in full of Transfer Tax, as follows:

Beneficiary	Appraised value
Thomas A. Baldwin, Adult (son), Sole beneficiary	121,614.74
Exempt	20,000.00
	101,614.74
50,000.00 @ 2%	1,000.00
51,614.74 @ 4%	2,064.59
101,614.74	3,064.59
Less 5% discount	153.22
	$2,911.37

Date of death of deceased: October 4, 1926.

Given in duplicate at Quincy this 24th day of March A. D. 1927.

Charles F. Hildebrand, County Treasurer.

STATE OF ILLINOIS, ss:

Office of State Treasurer

Springfield, Ill., Mar. 29, 1927.

This is to certify that I have this day charged the County Treasurer of Adams County, Illinois, with the amount of the above Transfer tax.

In witness whereof, I have countersigned this certificate and affixed thereto my official seal of the day and year aforesaid.

G. De F Kinney, State Treasurer. (Seal.)

3-29-27.

s.

[fol. 45] STATE OF ILLINOIS,
Adams County, ss:

I, Charles F. Hildebrand County Treasurer in and for the county aforesaid, do hereby certify that the foregoing is a true copy of a receipt given to Thomas A. Baldwin aforesaid, by Charles F. Hildebrand County Treasurer of this County, for Transfer Tax on the above described property, as fully and completely as the same appears on file in my office.

Given under my hand this 24th day of March A. D. 1927.

Charles F. Hildebrand, CountyTreasurer.

STATE OF ILLINOIS,
Adams County, ss:

I, W. J. Smith, Clerk of the County Court of the County and State aforesaid, hereby certify that the foregoing contains a full, true and correct copy of Letters Testamentary issued to Thomas A. Baldwin, Executor of the last Will and Testament of Carrie Pool Baldwin, deceased. Said Letters are still in full force and effect and the said Thomas A. Baldwin is still acting as the Executor of said Estate, and also a full, true and correct copy of the Inventory

which was approved by the Court on the 28th day of January A. D. 1927. And also a full, true and correct copy of the Appraiser's Report, Order Approving Appraiser's Report and Fixing the Tax, and Receipt of the County Treasurer of Adams County, Illinois, in the matter of [fol. 46] the Inheritance tax in the estate of said Carrie Pool Baldwin, deceased, as the same now appears of Record and on files in my office remaining.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Quincy, this Tenth day of June, A. D. 1927.

W. J. Smith, Clerk.

(Certificates of authentication under Acts of Congress duly attached thereto.)

In support of this correct and supplemental abstract respondents tender the original bill of exceptions and original court records in said cause.

Respectfully submitted.

Harry Carstarphen, John F. Garner, Attorneys for Respondents.

Minute entry of argument and submission May 9, 1929, omitted in printing.

[fol. 47] IN SUPREME COURT OF MISSOURI

STATE OF MISSOURI, Appellant,

v.

Estate of CARRIE POOL BALDWIN, Deceased, Respondent

Appeal from the Circuit Court of Lewis County

JUDGMENT—June 29, 1929

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth

consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Lewis County rendered, be reversed, annulled and for naught held and esteemed, and that the said appellant be restored to all things which it has lost by reason of the said judgment. It is further considered and adjudged by the court that the said cause be remanded to the said Circuit Court of Lewis County for further proceedings to be had therein in conformity with the opinion of this court herein delivered; and that the said appellant recover against the said respondent its costs and charges herein expended and have execution therefor.

(Opinion filed.)

[fol. 48] IN SUPREME COURT OF MISSOURI, EN BANC, APRIL TERM, 1929

No. 28664

STATE OF MISSOURI, Appellant,

v.

CARRIE POOL BALDWIN, Respondent

OPINION

This proceeding was begun in the Probate Court of Lewis county to assess an inheritance tax against property belonging to the estate of Carrie Pool Baldwin, deceased.

Carrie Pool Baldwin did testate in Quincy, Illinois, October 4, 1926. Her will was probated in Illinois. At the time of her death she was a resident of Illinois, as was her son Thomas A. Baldwin, sole devisee and executor of the will.

Letters of administration with will annexed were issued on her estate October 22, 1926, to Harry Carstarphen, of Hannibal, Missouri, and the will admitted to probate in Lewis county, Missouri. The Judge of the Probate Court of Lewis county appointed appraisers to fix the value of decedent's property in Missouri, subject to inheritance tax. The executor, Mr. Baldwin, filed a motion in that court asking the court to order the administrator to turn over

to him all the personal and intangible property in the estate of decedent in Missouri. The motion was overruled.

The appraisers proceeded to appraise the property, made report to Mr. Carstarphen, the Missouri administrator, and Thomas A. Baldwin, executor, filed exceptions to that report. Exceptions were overruled and inheritance tax assessed against certain property belonging to the estate. The administrator appealed from the ruling of the probate [fol. 49] court to the circuit court, where, September 5, 1927, judgment was rendered by that Court setting aside that part of the appraiser's report assessing inheritance tax against the intangible property of the estate, and from that judgment the state appealed to this Court.

The total property listed by the appraiser consisted of certain real estate situated in Lewis county, Missouri, valued at $55,380, and certain personal property amounting to more than eighty-five thousand dollars; a total of $141,278.09. After deductions and exemptions the total estate listed for taxation in Missouri amounted to $121,358.80. Of this the real estate valued as above, was held by the trial court to be properly listed and assessed for inheritance transfer tax, but held that the personal property listed, amounting to more than $65,000, was not subject to taxation.

The personal property which the circuit court held was not taxable included $15,937.51, deposited with the Southeast Missouri Trust Company at Cape Girardeau, Missouri; $1078.24 deposited in Advance Exchange Bank at Advance, Missouri; two Liberty Bonds of one thousand dollars each. The remainder consisted of about thirty promissory notes due the deceased, signed by various parties, all of which, it is stated, were secured by mortgages on real estate in Missouri with the exception of five notes unsecured, three of them for small amounts. There was no evidence as to why these deposits, notes and bonds were in Missouri, nor how they came into the possession of the Missouri administrator. It is not questioned that he was rightfully appointed administrator in this State and lawfully came into possession of the said evidences of debt. The only showing that they were in fact in Missouri was the motion filed by Thomas A. Baldwin, executor, to have the property turned over to him.

[fol. 50] On trial in the circuit court the attorney for the executor introduced in evidence a list of the property consisting of exactly the same cash in bank, bonds and notes, listed by the executor in Missouri, as listed in the state of Illinois, and made subject to inheritance tax in that state.

I. As to the money deposited in the bank, the relation of debtor and creditor exists between the bank and the depositor. The money is in fact the property of the bank, and it owes the amount of its deposit to its depositor. As to the notes, the simple relation of debtor and creditor exists. The Government bonds likewise are debts which the government owes to the bondholder. All these different kinds of property may be considered as of one class for the purposes of this case.

In recent cases we have held for the purpose of property tax that the situs of a credit is the domicile of the creditor, citing Railroad Co. v. Pennsylvania, (15 Wall. 300), where it was held that debts have no locality separate from the parties to whom they are due and to tax them elsewhere might be unconstitutional as impairing the obligation of contract. (State ex. rel. v. Gehner, 8 S. W. (2nd) 1057, l. c. 1060, and cases cited; State ex rel. v. Gehner, 8 S. W. (2nd) 1068).

If we could apply the same rule to an inheritance tax we might have less difficulty in disposing of this case. The inheritance tax statute, Article XXI, Ch. 1, R. S. 1919, provides an entirely independent method of ascertaining the property subject to inheritance tax from that applicable for general tax. The definition of the term "property" in the last section, 589, of that Article, makes inapplicable any definition relating to general property tax. An inheritance tax is not a property tax, but an excise tax, or a tax [fol. 51] upon succession. (In re Zooks Estate, 296 S. W. l. c. 780, and cases cited.)

II. Section 558 R. S. 1919, imposes a transfer or inheritance tax in the following cases:

"When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of this state. When the transfer is by will, or intestate law of property within the state or

within the jurisdiction of the state and decedent was a nonresident of the State at the time of his death."

We are concerned only with the second sentence, which applies to nonresidents whose property at the time of death is within the state or within the jurisdiction of the state. There is no difficulty in ascertaining when property is within the state. According to the doctrine mobilia personam sequuntur, which we have held to prevail for purpose of general taxation in cases above cited, it might be said that the property in question here was not within the state although it might be within the jurisdiction of the State. There was no claim at the time the executor filed his motion to have the property transferred to him, that the money in bank and the evidences of debts were in this state only temporarily. The decedent, Carrie Pool Baldwin, had large possessions in this state including the real estate mentioned the only personal property listed upon which an inheritance tax was levied in Illinois was the very property listed here. These notes, bonds and cash were all in the possession of the administrator in Missouri. For what purpose they were in Missouri is not shown. We cannot assume that they were in the State of Missouri for the purpose of escaping taxation in the State of Illinois. It is a reasonable inference that the cash and notes in such large quantities in Missouri, when none of it was held in Illinois, was retained in this state for the purpose of investment. They may have es- [fol. 52] tablished a business situa in this state, in which case it would be subject to a general tax as well as the inheritance tax.

III. Was the property under consideration here within the jurisdiction of the state? The notes were in this state in the custody of the Missouri administrator. The debts were secured by mortgage on Missouri real estate except a few of the notes which with the bonds were also in the custody of the administrator; the money was in banks in Missouri.

Some of the adjudications on the subject are important: In New York, in the Matter of Whiting, (150 N. Y. 27), it was held that money deposited in bank in New York of a resident of Rhode Island, was subject to the tax. The

Court, (l. c. 30), delivered this proposition, construing an act of the legislature:

"Thus the legislature intended as I think, to repeal the maxim mobilia personam sequuntur so far as it was an obstacle and leave it unchanged so far as it was an aid to the imposition of a transfer tax."

The ruling in the Whiting case was affirmed by the Court of Appeals. The principle announced in the quotation would lead to inequitable results and make possible double taxation. New York later amended its statute. And it was held in In Re Colt's Estate, (211 N. Y. Supp. 541, l. c. 543), that money of a nonresident lent to a firm doing business in New York was not subject to a transfer tax in New York.

In the state of Iowa that rule formerly prevailed, but a different rule is announced in later cases. It was held in Chaffin v. Johnson, (200 Iowa 86), that a promissory note executed by a resident of the state, secured by mortgage on Iowa real estate, the note and mortgage belonging to a nonresident, having never been kept in Iowa "is subject to the jurisdiction of the courts of this State," and subject [fol. 53] to the tax. The clause is similar in significance to that in our statute.

In Hoyt v. Keegan, (183 Iowa 502), it was held that a bank deposit in Iowa was subject to collateral inheritance tax, though the pass book and the certificate of deposit were in the actual possession of the decedent at the time of his death in Illinois. The reason was the same in both cases; the creditor was protected in the security of his debt by the courts of the State of Iowa, and he was obliged to resort to those courts in order to secure his debt and enforce its payment. Therefore it was subject to the jurisdiction of the courts of the state.

In State v. Jones, (261 Pac. 356, l. c. 357 and 359), the Supreme Court of Montana held promissory notes secured by mortgage in Montana, although the notes at the time were located in New York, the home of the decedent, were subject to the transfer tax. That was under a statute which subjects to the tax a nonresident's "property in the state or *within its jurisdiction.*" The exact phrase in our statute.

The Supreme Court of Colorado, In Re Waldron's Estate, (267 Pac. 191), construed a statute providing for such a tax on property "within the state." It was held that cash in a safe deposit box and United States bonds, certificates of deposit of a nonresident, was property within the state. The Court considered the proposition that in a bank deposit the relation of debtor and creditor exists between the banker and the depositor, and the situs of the property for some purposes is the domicile of the depositor, but that principle has no force under the inheritance tax law.

The Federal Supreme Court, in Blackstone v. Miller, (188 U. S. 189), had under consideration the right of a state to impose a transfer tax upon bank deposits of the decedent whose domicile was in another state, although it might be so taxed in the state of the domicile. The Court, [fol. 54] (l. c. 203), notes that the property when found was not in transitu, in such sense as to withdraw it from the power of the state; it was delayed within the jurisdiction of New York an indefinite time.

In Kinney v. Treasure, (207 Mass. 368), it was held that promissory notes secured by mortgages on real estate in that state belonging to a nonresident decedent were subject to transfer tax. The court mentioned the rule in Massachusetts that the mortgagee holds the title to the property until it is redeemed (l. c. 370), but also called attention to a similar rulings in states where it was held that a mortgage is only a lien on the real estate.

Blackmoor and Bancroft on Inheritance Tax, (pp. 157-158), cites cases where a distinction is made between the property of a nonresident placed in the hands of an agent within the state for management and control, and where that condition does not apply, and Section 219, (p. 180), in regard to mortgage liens, states the rule that

"The succession may be taxable either at the home of the mortgagee or in the jurisdiction where the land lies, although the note and mortgage are actually in possession of the mortgagee at his domicile."

The late cases cited above are samples of the prevailing doctrine in other states. But there are cases where it is held that a transfer tax cannot be imposed on promissory notes and other debts of a nonresident. Chambers v. Mum-

ford, (187 Calif. 228) was such a case where it was held that a note executed by a resident, payable to a nonresident, was not subject to a transfer tax. The court calls attention to the statute under which that ruling was reached, (l. c. 232), which permitted such taxation upon property "*within this state,*" and held the maxim "*mobilia personam sequuntur*" applied.

[fol. 55] The same ruling in Pennsylvania, In Re Helena, (236 Pa. 213; 46 L. N. S. 1167, et seq.). It was held that the personal property of a nonresident in the hands of trustees in that state maintains a situs at the decedent's domicile and is not subject to collateral inheritance tax, because it was not "*situated within this state.*" Copious notes in 46 L. N. S. at the pages cited considers cases from many jurisdictions. Attention is called to a tendency to adopt legislative action so as to prevent double taxation in such cases. Some states have enacted statutes which would prevent an inheritance tax upon property so taxed in another state.

The rule in Michigan is that a debt secured by mortgage in that, state, payable to a nonresident, is subject to the inheritance tax. Bradley v. Merriam Estate, (9 N. L. N. S. 1104), and in that case the notes and mortgages were in the possession of the decedent at the time of his death.

We find no authority denying the right to impose the tax under a statute containing a clause similar to our "within the jurisdiction or the state," where the evidence of the debt and the debtor are in the State imposing it, and the creditor is a nonresident. In this case the notes secured by mortgages were on land in this state, an asset in the estate of the decedent, protected by the laws of this state. The creditor or his devisee or legatee must have recourse to the courts and laws of this state to protect his rights in a debt to secure its payment. That is equally true of the money in bank. That is likewise true of the bonds and the unsecured notes which were physically present in the state where the debtor resides. All this property was inventoried by the administrator in Missouri. It was properly and lawfully in his custody, which indicates that it was not in transitu nor temporarily within the state. All [fol. 56] of it was properly within the jurisdiction of a probate court in this state, and therefore "within the juris-

diction of the state" in the terms of the statute. Such evidences of debt could not remain in this state without being in the custody of some person or corporation who had authority over it as an agent of the owner, otherwise it would not have been here so as to be accessible to the administrator. It possibly acquired a business situs in this state. Whether it did or not it was within the jurisdiction of the state and property subject to the transfer tax. It would have been a proper subject of inquiry by the trial court to determine how and why and under what conditions these evidences of debt were in this state, but whatever the determination of that question the property was legally within the jurisdiction of the probate court of Lewis county in this state and subject to the tax.

That Illinois taxed it does not affect the right of Missouri to tax it, as shown in several of the cases cited. That such double taxation is inequitable and should be remedied by statute does not affect the legal right to impose the tax. We are obliged to declare the law as the lawmakers have enacted it.

Two principal cases in this state are cited. In Re Zooks Estate, (296 S. W. 778), and Richardson v. Busch, (198 Mo. 174). In both those case- this Court had under consideration the inheritance tax applied to certificates of stock in a foreign corporation. Stock and certificates of stock are quite different from evidences of debt such as bonds and notes, although the reasoning in the Zooks case would apply here.

The judgment is reversed and the cause remanded with directions to the trial court to proceed in accordance with this opinion.

Frank, Blair & Garth, J. J., concur; Walker, J., concurs in separate opinion; Atwood, J., not sitting; Ragland, J., dissents.

J. T. White, Chief Justice.

[fol. 57] IN SUPREME COURT OF MISSOURI, April Term, 1929, EN BANC

[Title omitted]

CONCURRING OPINION

WALKER J., concurring:

I concur in the result reached in the leading opinon but deem it not inappropriate to state the facts as I read the record, and my reasoning and conclusion as to why the judgment of the circuit court should be reversed and remanded.

This is a suit to subject to the payment of an inheritance tax certain intangible personal property belonging to the estate of Carrie Pool Baldwin, who died testate at her home in Qunicy, Adams County, Illinois, October 4, 1926. Her son and sole legatee, Thomas A. Baldwin, was, under the terms of her will, the executor of her estate. Ancillary letters of administration with the will annexed, upon her property in this state, were issued in Lewis County, Missouri, to Harry Carstarphen on the 22nd day of October, 1926. Her estate consisted of real and personal property in the states of Illinois and Missouri. Aside from her real property in Missouri, not involved in this controversy, her personal property therein consisted of cash, United States Government bonds and promissory notes of individuals and corporations, of the aggregate face value of $58,898.09. This property had been deposited by her at various times in lock boxes and safe deposit vaults in different banks in this state.

The notice required by Section 568, R. S. 1919, of the inheritance tax law, in regard to property in this state belonging to a non-resident decedent owner, was given to the State Treasurer. On December 16, 1926, the Probate Court [fol. 58] of Lewis County, Missouri appointed an appraiser to appraise the property above mentioned belonging to the non-resident decedent, Carrie Pool Baldwin, for the purpose of determining the amount of the inheritance tax due thereon. This appraisement was made and upon the report of the same being filed in the probate court that court approved the report and assessed an inheritance tax upon all

of the property of the non-resident decedent listed in said report as located in this state. Upon the filing of said report the domiciliary and the ancillary administrators filed in said court exceptions to the report of the appraiser, contending that the intangible personal property of the non-resident decedent located in this state, to-wit; the cash, bonds, notes, etc., was not taxable in this state on account of the nature of said property and the non-residence of the testator. The court overruled these exceptions and the administrators appealed to the Circuit Court of Lewis County, Missouri. Upon the case being heard in that court on the exceptions filed in the probate court, the ruling of the probate court was reversed and it was held that all that portion of the appraiser's report which appraised the intangible personal property of the non-resident decedent was void. An appeal from said judgment was thereupon perfected to this court.

The section of the Missouri Inheritance Tax Law, (Sec. 558, R. S. 1919), so far as the same has reference to the matter at issue, is in effect as follows: "A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or any interest therein, or income therefrom, in trust or otherwise, to persons, institutions, associations or corporations * * * when the transfer is by will, or intestate law of property within the state, or within the jurisdiction of the state and the decedent was a non-resident of the state at the time of his death. When the transfer is made by a resident or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor, or donor or intending to take effect in possession or enjoyment at or after such death."

I. The intangible character of the personality involved in this controversy is conceded by the respondent. The ques-[fol. 59] tion demanding solution is the liability of this property to taxation under the inheritance law of this state. The theory adopted here and elsewhere, as a basis for the imposing of what is designated as a tax of this character, is that it is an excise or import levied on the transfer of the property from dead hands to living ones, (Knowlton v. Moore, 178 U. S., 41, 44 Law Ed., 969; Scholey

v. Rew, 23 Wall. 331, 123 Law Ed., 99; Est. of Zook-Hibbard v. Thompson, 317 Mo., l. c. 995, 296 S. W., 778).

Although the value of the property is used to determine the amount of the tax, this is the only respect in which it bears a resemblance to property taxation. It may well be said, therefore, that it is not a tax on property, but upon the right of its transmission or succession, (McClintock v. Guinotte, 275 Mo., 298; Est. of Remme-McGuire v. University, 271 Mo., 359; State ex rel. Fath v. Henderson, 160 Mo., l. c. 215). Probably the best definition of the same, and the one adopted by many authorities, is that it is a charge on the privilege of succession or the right of the heir, devisee or legatee to receive rather than the right of an ancestor or donor to give, or, through the instrumentality of the law, to transmit his property, State ex rel. Garth v. Switzler, 143 Mo., 328; State ex rel. v. Mann 76 Wisc., 478; Gelsthorpe v. Turnell, 20 Mont., 299, 39 L. R. A., 170; Lacy v. State Treas., 121 N. W. (Ia) 179).

II. The comprehensive language of Sec. 558, R. S. 1919, is such as to include within the power of the state any property, real, personal or mixed, or any interest therein or income therefrom, in trust or otherwise, when the property is within the state or within its jurisdiction at the time of the death of the owner, whether the latter was at the time a resident or a non-resident of the state.

The provision of the statute being ample to authorize the imposition of this tax, it remains to be determined whether from the nature of the property or from constitutional or other considerations, the statute may be held to apply in cases as at bar.

It may be stated generally that all property, tangible or intangible, no matter where located and whether it has ever [fol. 60] been within the state or not is subject to an inheritance tax in the state of the domicile of the decedent. We so held in In re Est. Zook-Hibbard v. Thompson, (317 Mo., 986, 296 S. W., 778 and cases cited). We are not concerned here with the reasons for such ruling, other than to say that the theory upon which the imposition of the tax was upheld was under the maxim, mobilia sequuntur personam. Whether the application of this maxim is founded in reason as to property actually located other than at the

domicile of the owner, might, if the facts warranted, be entitled to serious consideration. We say this incidentally, because a review of the cases leads to the conclusion that the application of this maxim that moveables follow the person, has been, in many instances, cut down until its field has not only become very narrow, if it may be said to still exist. It will be enough to say that the history of the origin of this maxim is stated in an interesting manner in Wharton's Conflict of Laws (3rd ed.), Sec. 297, in which it is shown that the origin and application of the maxim was under conditions entirely different from those existing at the present time.

III. The facts at bar present a case the converse of those in In re Zook's Estate, supra. In the latter the question submitted was the authority of this state to levy an inheritance tax on intangible property on deposit in banks in another state than that of the decedent owner, who resided at the time of his death in this state. In the instant case it is sought to impose the tax on intangible property located in this state, the decedent owner of which had her domicile in another state at the time of her death.

The validity, therefore, under the Constitutions, State and Federal, of the statute authorizing the imposition of an inheritance tax under the facts in the case at bar, is of moment in the determination of this case.

In Blackstone v. Miller, 188 U. S., 189, 47 Law ed., 439, the constitutional power of a state by virtue of the citizenship and residence of the debtor to exact an inheritance tax in respect of a debt due from a resident of the state to the estate of a non-resident, was affirmatively declared. The [fol. 61] indebtedness in that case consisted of bank deposits which were regarded as money for all practical purposes owned by a non-resident decedent at the time of his death and as such taxable under the inheritance or transfer law of the state. In rendering this decision the United States Supreme Court did not rest its ruling upon any distinctions between the technical indebtedness represented by a bank deposit and other forms of indebtedness, but it was expressly put upon the broader ground that the transfer of the indebtedness depends upon the law of the residence of the debtor, not because of any theoretical speculation

concerning the whereabouts of the debt, but because of the practical fact of its power over the person of the debtor; the same principle, the court observed, that has been recognized with regard to the garnishment of a domestic debtor or an absent defendant—citing Chicago, R. I. & P. R. Co. v. Sturm, 174 U. S., 710, 43 L. Ed, 1144, 19 Sup. Ct. Rep., 797.

In State ex rel. Graf v. Probate Court, 128 Minn., 371, L. R. A., 1916A, 901, the devolution of debts owed to non-residents, whether evidenced by promissory notes or not, were subject to a succession tax. The debts consisted of promissory notes and book accounts, the debtor being a domestic corporation. The Minnesota statute imposed a tax when a transfer was by will or the intestate law of property within the state or within its jurisdiction and the decedent was a non-resident of the state at the time of his death. The court's holding was to the effect that the property might be subjected to the payment of a succession tax by the state in whose jurisdiction it was found.

In Chaffin v. Johnson, 200 Iowa, 86, 204 N. W., 424, the court quotes from Blackstone v. Miller, supra, to the effect that it is the Law of the place where the debtor is that renders the evidences of the debt liable to the payment of a succession tax; and in reply to the contention that a distinction exists between a bank deposit and other debts it was held as applied to the statute, that the distinction was without substance and that the deposit of funds in a bank and the taking of a negotiable certificate therefor created the relation of debtor and creditor.

[fol. 62] In State ex rel. Collector v. Bunce, 187 Mo. App., 607, 173 S. W., 101, a note belonging to the estate of a non-resident, the maker of which resided in Missouri, (the adminstration of whose estate was had in this state), was held to be within this jurisdiction and liable to an inheritance or succession tax. The facts in regard to that case are that the note was brought to Missouri by the owner of the same when he came here a short time before his death. The decision of this court was, however, not predicated on that fact but upon the fact that the debtor was a resident of this state and that administration was had thereon within this jurisdiction.

In Re Gibbes, 84 App. Div., 510, 83 N. Y. Supp., 53, affirmed without opinion in 176 N. Y., 565, 68 N. E., 1117,

the court observed that the decisions that money left on deposit by a non-resident within New York is taxable (Re Houdayer, 150 N. Y., 37, 34 L. R. A., 235, 55 Am. St. Rep., 642, 44 N. E., 718; Re Blackstone, 69 App. Div., 127, 74 N. Y. Supp., 508, affirmed in 171 N. Y. 682, 64 N. E., 1118, which is affirmed in Blackstone v. Miller, 188 U. S., 189, 47 L. Ed., 439, 23 Sup. Ct. Rep., 277), go upon the theory that money upon deposit in a bank is the same, in effect, as if the testator had placed the money in a deposit vault, and that, therefore, it is property left by him within the state. It may be observed, however, that the argument, at least, of the United States Supreme Court in the Blackstone Case, affirms the power of the state of the debtor's domicile to exact the tax, even in respect of ordinary debts.

Although the items belonging to the estate of the non-resident which were held subject to the tax in Re Daly, 100 App., Div., 373, 91, N. Y. Supp., 858, (affirmed without opinion in 182 N. Y., 524, 74 N. E., 1116), were treated as bank deposits and so equivalent to cash, the majority of the court was of the opinion that they would be subject to the tax even if treated as debts in the ordinary sense, citing in support of this view the opinion in the United States Supreme Court in Blackstone v. Miller, (U. S.), supra.

IV. Many of the objections here made to the constitutionality of the statute under review were ruled upon ad- [fol. 63] versely to the objectors by this court in McClintock v. Guinotte, 275 Mo., 298. In that case it was held that the statute was not in violation of the following constitutional provisions: Sec. 30 of Art. 2, that no person shall be deprived of property without due process of law; Sec. 28 of Art. 4, that no bill shall contain more than one subject which shall be clearly expressed in its title; Sec. 43 of Art. 4, that money received by the state shall be paid into the state treasury and not permitted to be diverted or drawn therefrom, except under lawful appropriations therefor; Sub-Sec. 16 of Sec. 53 of Art. 4, prohibiting the passage of local or special laws of descent or succession; Sub-Sec. 21 of Sec. 53, of Art. 4, prohibiting the passage of local or special laws affecting the estates of minors; Sec. 3, of Art. 10 that taxes must be levied and collected for public purposes and must be uniform upon the same class of subjects.

V. The strong trend of authority in the courts of last resort in the different states is in harmony with the ruling in the Blackstone case, supra, to the effect that inheritance taxes not being taxes on property but on the privilege of the transmission or succession of the same, a state may measure such taxes by the value of the property, although it may not tax the same directly.

It is a misconception of the rulings of the Supreme Court of the United States to contend that cases subsequent to the Blackstone case overrule the latter. In an interesting and exhaustive review of these cases (relied upon by the respondent) by Mr. Harry W. Kroeger in Vol. XIV, p. 99, St. Louis Law Review, it is clearly shown that they do not overrule the doctrine of the Blackstone case. It will be found upon an analysis of the cases referred to in the respondent's brief that the facts involved therein were different from those in [illegible] case; and that whatever may have been said in criticism [illegible] the latter was in passing, and was not decisive of the issues therein submitted.

VI. The ruling in the Zook case, supra, by our own Supreme Court, that intangible property located in another state and owned by one who at the time of his demise was a resident of this state, was taxable at the domicile of the [fol. 64] owner does not militate against the correctness of the conclusion that the privilege of taxing the transfer or inheritance of such property could only be levied at such domicile. Although subject to the tax in Missouri it might also be liable to a similar tax in the state where it was located. This conclusion is but the converse of the rule established by several authorities that the power of the domiciliary state to exact a tax on the transmission of intangible is not defeated by the imposition of a like tax by another state, (In Re Hodges, 176 Calif., 492, L. R. A., 1916-A, 837; Roark v. Matthews, 125 Ark., 378, 188 S. W., 841).

Our statute is sufficiently broad to authorize the exaction of an inheritance tax in respect of all property within the jurisdiction of the state regardless of the domicile of the owner. Under a statute not dissimilar in its material features from that at bar, the case of Re Hoffman, 70 N. J. Eq., 664, 62 Atl., 560, gives a comprehensive review of the power of a domiciliary state to exact an inheritance tax in respect of all personal property regardless of its location

and its subjection to the taxing power of other states. In that case it was held that the entire personal estate of a decedent domiciled in New Jersey was subject to the tax, although a tax of precisely the same character and amount had been levied and collected in New York where the personal property was located, and this notwithstanding that the New York tax had been legally imposed. The New Jersey court observed that the unfortunate situation resulting from the required payment of the two taxes of like character by the same legatees for the right of succession to the property could not control the determination of the question, for such a condition frequently arises and while its presence always induces careful consideration on the part of the court to find some legal method to prevent it, it must be submitted to unless it can be avoided under settled rules relating to the subject.

In Re Sandford, 188 Iowa, 833, 175 N. W., 506, in reply to the contention that personal property in Nebraska could be taken into consideration in fixing the tax at the domicile [fol. 65] of the owner in Iowa for the reason that a similar tax would be imposed and collected in Nebraska resulting in double taxation, the court said that whatever real merit may be claimed for that position the courts uniformly hold that the tax may be imposed by the state in which the property has its situs and also in the domiciliary state. "Each jurisdiction," said the court, "exercises its own separate and independent power of taxation and there is no conflict."

In Nuckolls v. Comm., 127 Va., 640, 105 S. E., 230, the court held that the fact that two states, each dealing with its own laws have taxed the rights of succession their laws respectively confer, affords no reason for complaint on constitutional grounds. This conclusion was occasioned by the overruling of an objection to the exaction of a tax in respect of shares of stock in a national bank located in Missouri, which stock was owned by a decedent domiciled in Virginia and which stock had been subjected to a similar tax in Missouri. This opinion is replete with learning on this subject.

VII. Further concerning the contention as to the invalidity of the inheritance tax statute on the ground that it is in violation of the Fourteenth Amendment of the Federal

Constitution, while not specifically referred to in the case of McClintock v. Guinotte, 275 Mo., 298, a like clause in Sec. 30, Art. 2 of the State Constitution to that in the Fourteenth Amendment having particular reference to the right to due process of the law, was construed, and it was held that the inheritance statute did not deny this right. A like conclusion is, under the most elementary rule of construction, applicable in determining whether the statute contravenes the Fourteenth Amendment. That it does not is attested by numerous cases construing like statutes, (Keeney v. N. Y., 222 U. S., 525, 56 Law ed., 299, 38 L. R. A., n. s., 1139 and cases; Nat'l Safe Deposit Co., 232 U. S., 58 Law ed., 504, Ann. Cas., 1912-B, 430; Minot v. Stevens, 207 Mass., 588, 33 L. R. A., n. s., 236).

The case of Frick v. Pennsylvania, 268 U. S., 473, is by no means a denial of the right of the state where the property is located to impose an inheritance tax with respect to [fol. 66] intangible personality. That case has reference to the denial of the constitutional power of a domiciliary state to tax tangible personal property physically located in another state than that of the decedent and not to intangibles.

The discussion of the power to tax by Chief Justice Marshall, in McCullough v. Maryland, (4 Wheaton, 316), has reference to property taxation as is evident from its context and not to a tax laid upon a privilege or a right to receive property by an heir or legatee.

A clear line of demarcation is made in the Frick case between the rules governing the taxation, under inheritance or succession laws, of tangible and intangible personalty. The following paragraphs from the opinion in that case will demonstrate the correctness of that interpretation:

"Counsel for the state cite and rely on Blackstone v. Miller, 188 U. S., 189, 47 Law ed., 439, 23 Sup. Ct. Rep., 277, and Bullen v. Wisconsin, 240 U. S., 625, 60 L. ed., 830, 36 Sup. Ct. Rep. 473. Both of the cases relate to intangible personalty, which has been regarded as on a different footing from tangible personalty. When they are read with this distinction in mind, and also in connection with other cases before cited, it is apparent that they do not support the tax in question."

So far as relevant to the matter at issue Blodgett v. Silberman, (277 U. S. 1, 48 Law ed., 410), simply holds that intangible personalty has such a situs at the domicile of the owner that its transfer upon his death may be taxed there. There is no ground for controversey in regard to this ruling militating against the power of a state where the property is located other than that of the domicile of the decedent to also impose an inheritance tax on such property. The legal propriety of such a course hase been demonstrated. Chief Justice Taft, who wrote the opinion in the Blodgett-Silberman case, expressly states that as to the right of the state of the situs to also impose an inheritance tax on intangible personalty is not a matter of inquiry in the Blodgett-Silberman case.

The question involved in State ex rel. Auto. Ins. Co. v. [fol. 67] Gehner, 8 S. W., (2nd), 1057, was in reference wholly to property and not to inheritance taxation. When the court says in that case that "bonds, mortgages and debts generally have no situs independent of the domicile of the owner" the reasonable interpretation of this declaration is that in limiting the situs, the court had reference to its purpose in the imposition of ad valorem or property taxes. No other question was in issue. A like rule of construction may be applied to a similar statement in State ex rel. Hickman v. Lewis, 256 Mo., 98, 165 S. W., 319.

For the reasons stated, so much of the judgment of the circuit court in this case is reversed which holds that the intangible personalty in this state belonging to the estate of Carrie Pool Baldwin is not subject to the payment of an inheritance tax; and the court is directed to enter up a judgment in conformity with this opinion.

R. F. Walker, Judge.

[fol. 68] In the Supreme Court of Missouri, en banc

[Title omitted]

Motion for Rehearing—filed July 9, 1929.

Now come respondents herein and move the court to set aside its opinion and decision heretofore filed in this case

[fol. 69] and grant respondents a rehearing for the following reasons:

Because the court has overlooked and not ruled upon a question decisive of the case which was duly submitted by counsel, to-wit: The constitutional question involved in construing the statutes on inheritance tax (Sec. 558, R. S. 1919). The constitutional provisions (set out in the brief herein of counsel for respondents) which the statute violates, when construed to embrace the evidences of debt, are:

First. Article II, Section 30, Constitution of Missouri.

Second. The Fourteenth Amendment to the Federal Constitution. The first is a guaranty written by the sovereign people of this State into their constitution that only by "due process of law" may property be taken. The second is the guarantee written into the Federal Constitution calculated to strengthen the bonds of union of the various States and enjoining . . e action of Missouri (as well as other States) against taking property from Carrie Pool Baldwin's estate without due process of law.

Third. Also Section 2, Article 4, of the Constitution of the United States and the Fourteenth Amendment thereof protect the privileges and immunities to citizens of the several states and afford equal protection of the law.

These points are first registered by exceptions filed in the [fols. 70-74] probate court herein and preserved in the record throughout to this court.

The opinion herein wholly overlooks and omits consideration of this the towering and over-shadowing point made by respondents and presented and pressed in the brief in manner and form as best counsel may.

The case of Frick vs. Pennsylvania, 268 U. S. 473; 45 S. Ct. 603, distinctly holds that it violates due process of law for two States to tax the passing of the same property.

Due process of law is in this State construed to mean the law of the land or settled course of judicial proceeding as set out under this point in respondents' heretofore submitted brief.

II

Because the decision is in conflict with an express statute (constitutional provisions) to-wit: Constitution of the

State of Missouri, Article II, Section 30; Constitution of United States, Article IV, Section 2, and Fourteenth Amendment.

For the above reasons respondents respectfully asks that the decision herein be set aside and a rehearing granted respondents.

Harry Carstarphen, John F. Garner, Attorneys for Respondents.

[fols. 75-81½] In Supreme Court of Missouri

[Title omitted]

Order Denying Rehearing—Aug. 2, 1929

Now at this day, the court having seen and fully considered respondent's motion for a rehearing, doth order that said motion be, and the same is hereby overruled.

[fols. 82 & 83] Bond on writ of error for $7,000 approved; omitted in printing.

[fol. 84] In Supreme Court of Missouri

[Title omitted]

Præcipe Indicating the Portions of the Record to be Incorporated Into the Transcript

Acknowledgment of service of a copy of this Præcipe on the defendant in error, the State of Missouri, made this 23 day of Aug., 1929.

Stratton Shartel, by W. E. Sloat, Attorney General.

[fol. 85] Præcipe for Transcript of Record—Filed Aug. 23, 1929

To the Clerk of the Supreme Court of the State of Missouri:

The Clerk will place in the Record:

First. Record Entry of Judgment of the Circuit Court and Order granting appeal.

Second. Appellants abstract of record: pages 1 to 12 inclusive, 13 to 15 inclusive, and the first two lines of 16; then omit the balance of 16 to "Deductions" on page 24; Clerk will then copy beginning with "Deductions" on page 24 to including page 26; then omit the first three paragraphs on page 27 and copy the balance of the Appraiser's Report found on pages 27 and 28; omit the balance of pages 28 to 36 inclusive; copy Motion on pages 37 and 38, also the Will on 38 and 39; omit the balance of 39; insert the suggestion made concerning the real estate on page 40; omit Order appointing Appraiser on pages 40 to 53; copy the Judgment on pages 53 to 57 inclusive, unless it is set out elsewhere, and then refer to the page whereon it is to be found; copy the balance of 57 to 61 inclusive.

Third. Respondent's abstract of record: Record entries on pages 2-3-4, and all of the "Exhibit A" from pages 4 to 17 inclusive.

Fourth. Final submission of cause in the Supreme Court of Missouri.

Fifth. Final judgment and opinions in the Supreme Court of Missouri.

Sixth. Motion for rehearing and order overruling same.

Seventh. Petition for writ of error, assignment of errors and prayer reversal.

Eighth. Clerk's certificate.

Respectfully, John F. Garner, Attorney for Plaintiffs in Error. Harry Carstarphen, of Counsel.

[File endorsement omitted.]

[fols. 86 & 87] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 88] IN SUPREME COURT OF MISSOURI

[Title omitted]

Petition for Appeal, Assignment of Errors, and Prayer for Reversal—Filed Sept. 21, 1929

The undersigned, Stratton Shartel, Attorney General of the State of Missouri, and attorney of record in the above

entitled cause for the appellee herein, State of Missouri, hereby acknowledges for the State of Missouri service of notice of appeal filed in the office of the Clerk of the Supreme Court of the State of Missouri, and acknowledges receipt of citation issued by the Chief Justice of the Supreme Court of the State of Missouri upon allowing appeal, and acknowledges receipt of a copy of application for appeal, assignment of errors and prayer for reversal; order allowing appeal; and citation by the court to this appellee. Such service made and such copies received this 21st day of September, 1929.

Stratton Shartel, Attorney General of State of Missouri, by M. Zeitz.

[fol. 89] PETITION FOR APPEAL

Considering themselves aggrieved by the final decision of the Supreme Court of the State of Missouri in the above entitled cause, the respondents therein, Thomas A. Baldwin; Thomas A. Baldwin, Executor of the will of Carrie Pool Baldwin, and Harry Carstarphen, Administrator of the estate of Carrie Pool Baldwin with will annexed, hereby pray that an appeal be allowed to the Supreme Court of the United States.

[fol. 90] ASSIGNMENT OF ERRORS

And the said Thomas A. Baldwin; Thomas A. Baldwin, Executor of the will of Carrie Pool Baldwin, and Harry Carstarphen, administrator of the estate of Carrie Pool Baldwin with will annexed, assign the following errors in the record and proceedings in said case:

(1) The Supreme Court of Missouri erred in sustaining the validity of Section 558, Revised Statutes of Missouri, 1919, because said statute seeks to impose inheritance tax upon intangible personal property of a non-resident decedent repugnant to the Fourteenth Amendment of the Constitution of the United States, to-wit: (a) Deprives of property without due process of law; (b) denies equal protection of the law; (c) effort of one state to abridge the privileges and immunities of citizens of the United States.

(2) The Supreme Court of Missouri erred in sustaining the validity of Section 558, Revised Statutes of Missouri,

1919, because the decisions of this court (Supreme Court of the United States) announce the law thus: that under the Constitution of the United States it is a violation of due process of law for two states, or all of the states, of the United States to tax the transfer or inheritance of the same property. The inheritance tax may not be exacted by but one state.

(3) The Supreme Court of Missouri erred in sustaining the inheritance tax or transfer tax and imposing such tax upon intangible personal property owned by a non-resident decedent which passes by will to her son a non-resident. Property passes but once and in but one state which is, in the case of intangible personalty, the state of the domicile of the decedent.

(4) The Supreme Court of the State of Missouri erred in sustaining the validity of Section 558, Revised Statutes of Missouri, 1919, because said statute seeks to impose inheritance tax on intangible personal property of a non-resident decedent repugnant to Section 2, Article 4, of the Constitution of the United States, in that Section 558 is in violation of the guarantee to the citizens of each state all privileges and immunities of citizens in the several states.

[fol. 91] PRAYER FOR REVERSAL

For and due to which errors the appellants, Thomas A. Baldwin; Thomas A. Baldwin, Executor of the will of Carrie Pool Baldwin, and Harry Carstarphen, Administrator of the estate of Carrie Pool Baldwin with will annexed, pray that said judgment of the Supreme Court of the State of Missouri in the above entitled cause, rendered on date of June 29th, 1929, and whereon motion for rehearing was overruled on date of August 2nd, 1929, be reversed and a judgment rendered in favor of said appellants herein and for costs.

John F. Garner, Counsel for Appellants. Harry Carstarphen, of Counsel.

[File endorsement omitted.]

[fol. 92] IN SUPREME COURT OF MISSOURI

[Title omitted]

ORDER ALLOWING APPEAL—Filed Sept. 21, 1929

The appellants in the above entitled cause having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled cause by the Supreme Court of the State of Missouri on the 29th day of June, 1929, (motion for rehearing overruled August 2nd, 1929), and from each and every part thereof, and having presented and filed their petition for appeal, assignment of errors and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such cases made and provided:

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of Missouri in the above entitled cause, as provided by law, and it is further ordered that the clerk of the Supreme Court of the State of Missouri shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within thirty days of this date.

And it is further ordered, bond herein having been given and approved in the sum of Seven Thousand Dollars ($7,000.00) in writ of error in this cause, that such bond suffice for the appeal.

Dated this 21st day of September, 1929.

J. T. White, Chief Justice of the Supreme Court of the State of Missouri.

[fols. 93 & 94] Citation, in usual form, showing service on Stratton Shartel, filed September 21, 1929, omitted in printing.

[fol. 95] In Supreme Court of the United States

Statement of the Points to be Relied Upon and Designation of Parts of Record to be Printed—Filed Sept. 24, 1929

Acknowledgment of service of a copy of this Statement of the Points to be Relied upon and Designation of Parts of Record to be Printed on the defendant in error, the State of Missouri, made this 7th day of September, 1929.

Stralton Shartel, Attorney General, by W. E. Sloat, Spec. Asst. Atty. Gen'l.

[fol. 96] Statement of the Points to be Relied Upon and Designation of Parts of Record to be Printed

Comes now the plaintiffs in error in the above entitled cause and state that the points upon which they intend to rely in this case are as follows:

Point 1. That the Supreme Court of Missouri erred in finding and holding Section 558, Revised Statutes of Missouri 1919, valid and not repugnant to the due process of law clause of the Fourteenth Amendment of the Constitution of the United States, because said section imposes inheritance or transfer tax upon intangible personal property of a non-resident decendent which has been taxed at the state of the domicile.

Point 2. That the Supreme Court of Missouri erred in finding and holding Section 558, Revised Statutes of Missouri 1919, valid, because said section denies equal protection of the law and abridges the privileges or immunities of the citizens of the United States in violation of the Fourteenth Amendment of the Constitution of the United States.

Point 3. That the Supreme Court of Missouri erred in finding and holding that the intangible personal property passing from a non-resident decedent to a non-resident is taxable, because the intangible personal property passed but once, which is at the situs of the intangible personal property, i. e., the state of the domicile of decendent. There was no evidence at the trial and there is no evidence whatsoever in this record from which a business agency in Mis-

souri may be found or even contended. The State of Missouri appealed from the trial court.

[fol. 97] Point 4. That the Supreme Court of Missouri erred in finding and holding Section 558, Revised Statutes of Missouri 1919, valid, because said section imposes inheritance or transfer tax upon intangible personal property of a non-resident decedent in violation of Section 2, Article 4 of the Constitution of the United States, guaranteeing to the citizens of each state all privileges and immunities of citizens in the several states.

And the plaintiffs in error further state that only the following parts of the record as filed in this court need be printed by the clerk for the hearing of the case:

The entire record as filed in this court except the printed argument on motion for rehearing found on pages 71, 72, 73 and 74, thereof.

(Signed) John F. Garner, Counsel for Plaintiffs in Error. Harry Carstarphen, of Counsel.

[fol. 98] [File endorsement omitted.]

[fol. 99] In Supreme Court of the United States

Additional Designation of Parts of Record to be Printed —Filed Oct. 1, 1929

Acknowledgment of service of a copy of this Additional Designation of Parts of Record to be Printed, on the appellee, State of Missouri, made this — day of September, 1929.

—— ——, Attorney General, for Appellee, State of Missouri.

[fol. 100] Additional Designation of Parts of Record to be Printed

Come now the appellants in the above entitled cause and state that the clerk will in making up the record print therein appellants' petition for appeal, assignment of errors and prayer for reversal, order allowing appeal, citation under appeal and acknowledgment of service of appeal

by appellee, and omit those instruments pertaining strictly to writ of error and not a part of the procedure of proper appeal, to-wit: petition for writ of error, assignments and prayer for reversal, pages 76 to 78; order allowing writ of error and citation, pages 79 and 81.

John F. Garner, Counsel for Appellants. Harry Castarphen, of Counsel.

[fol. 101] [File endorsement omitted.]

Endorsed on cover: File No. 34,548. Missouri Supreme Court. Term No. 417. Thomas A. Baldwin, *Thomas A. Baldwin*, executor of the will of Carrie Pool Baldwin, et al., etc., plaintiffs in error and appellants, vs. State of Missouri. Filed September 24, 1929. File No. 34,548.

E COPY

Office Supreme
FILE
NOV 4
CHARLES ELMO

No. _____

(Docket No. 417.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

THOMAS A. BALDWIN, THOMAS A. BALDWIN, EXECUTOR OF THE WILL OF CARRIE POOL BALDWIN, AND HARRY CARSTARPHEN, ADMINISTRATOR OF THE ESTATE OF CARRIE POOL BALDWIN WITH WILL ANNEXED, APPELLANTS,

VS.

STATE OF MISSOURI, APPELLEE.

JURISDICTIONAL STATEMENT.

JOHN F. GARNER,
Counsel for Appellants.

HARRY CARSTARPHEN,
Of Counsel.

INDEX

Subject Index

Jurisdictional Statement 1

Statutory Provisions Sustaining Jurisdiction 2-8

Table of Cases

Blodgett, Tax Commissioner of Connecticut vs. Silberman, et al., 277 U. S. 1, Nos. 190 and 191 . . 7

Buck vs. Beach, 206 U. S. 392 7

Frick vs. Pennsylvania, 268 U. S. 473, l. c. 496 6

In re Zook's Estate, 317 Mo. 986 8

Philadelphia & Reading Coal & Iron Co. vs. Gilbert, 245 U. S. 162 3

Rhode Island Hospital Trust Co. vs. Doughton, 270 U. S. 69, l. c. 80 . . . . . 6, 7

State of Missouri vs. Baldwin's Estate 2, 4

State Tax on Foreign Held Bonds, 15 Wall. 300, 21 L. Ed. 179 7

State ex rel. American Central Ins. Co. vs. Gehner . . 8

State ex rel. American Auto Ins. Co. vs. Gehner 8

The People vs. Foreman, 322 Ill. 223 8

Union Refrigerator Transit Co. vs. Kentucky, 199 U. S. 194 6

Wachovia Bank & Trust Co. vs. Doughton, 272 U. S. 567 8

No. _____

(Docket No. 417.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

THOMAS A. BALDWIN, THOMAS A. BALDWIN, EXECUTOR OF THE WILL OF CARRIE POOL BALDWIN, AND HARRY CARSTARPHEN, ADMINISTRATOR OF THE ESTATE OF CARRIE POOL BALDWIN WITH WILL ANNEXED, APPELLANTS,

VS.

STATE OF MISSOURI, APPELLEE.

JURISDICTIONAL STATEMENT.

MAY IT PLEASE THE COURT:

Appellants respectfully show to this Honorable Court the basis on which it is contended this Court has jurisdiction to review on appeal the judgment herein of the Supreme Court of the State of Missouri:

I.

Statutory Provisions Sustaining Jurisdiction.

The case of *State of Missouri* v. *Baldwin's Estate*, decided by the highest court of the state in which a decision could be had, viz: the Supreme Court of the State of Missouri, on June 29th, 1929, and rehearing denied August 2nd, 1929, and being case number 28,-664, found in 19 S. W. (2) pages 732 to 740, (not yet printed in the official reports of the State of Missouri), (R. 43), draws in question the validity of a statute of the State of Missouri on the ground of its being repugnant to the Fourteenth Amendment to the Constitution of the United States, to-wit:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

and Section 2 of Article 4 of the Constitution of the United States, to-wit:

> "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Title 28, United States Code Annotated, Section 344, (Judicial Code Section 237 amended), makes reviewable in the Supreme Court of the United States by writ of error a decision of the highest court of a state sustaining the validity of a statute of that state against attack on the ground of the said statute vio-

lating the limitations imposed by the Constitution of the United States, and under said section 344 of Title 28, United States Code Annotated, the Supreme Court of the United States may reverse, modify or affirm the decree, and in its discretion remand the case to the Supreme Court of the State of Missouri.

This section of the statute (344 of Title 28, U. S. C. A.) is construed in *Philadelphia & Reading Coal & Iron Co.* v. *Gilbert*, 245 U. S. 162, and it is there held that where a state statute is attacked for its invalidity as contrary to the limitations imposed by the Constitution of the United States, and the highest court of the state sustains the validity of the statute, writ of error is the proper procedure.

Writ of error however is abolished by Act of January 31st, 1928, and Act of April 26th, 1928. Title 28 United States Code Annotated, Section 861a and 861b.

The state statute in question (R51) imposes inheritance, transfer or succession tax. Said section is in part as follows:

> "When a transfer is by will, or intestate law of property within the state or within the jurisdiction of the state and the decedent was a non-resident of the state at the time of his death."

Under this statute the Supreme Court of the State of Missouri has decided that intangible personal property, such as debts due a non-resident decedent, are, regardless of all other questions, taxable in Missouri where evidences of the debt may be found in Missouri. The

cases cited in the concurring opinion of the Supreme Court of Missouri (R. 57) are the cases relied on by these appellants to sustain their position in this appeal.

II.

The case of *State of Missouri* v. *Baldwin's Estate* was decided by the highest court of the State of Missouri and judgment rendered, which is the judgment here sought to be reviewed, on June 29th, 1929 (R. 47).

Motion for rehearing was denied on August 2nd, 1929 (R. 75).

The application for appeal was presented to the Chief Justice of the highest court of the State of Missouri, to-wit: the Supreme Court of the State of Missouri, being the court wherein the decision was rendered, on September 21st, 1929, and that day allowed (R. 79.).

This appeal was lodged with the Supreme Court of the United States on September 24th, 1929 (R. ...).

III.

Carrie Pool Baldwin died testate in Quincy, Illinois, a resident of Illinois. Her will was probated in the State of Illinois and inheritance tax imposed upon the land in Illinois and *all* of her intangible personal property. Ancillary letters of administration with will annexed were issued in Missouri on account of certain land located in Missouri. The estate consisted of land in the states of Illinois and Missouri, which passed by the will, and intangible personal property due decedent in the form of bank accounts, government bonds

and promissory notes both secured and unsecured due from both residents of Missouri and non-residents of Missouri. Under certain statutes of Missouri, designed to find taxable property, evidences of debt due the non-resident decedent were discovered in Missouri and reported in course to the State Treasurer. This was all subsequent to the date of her death. The inheritance tax appraiser appraised the debts due the non-resident decedent in the form of bank accounts, government bonds and notes, evidences whereof were found in Missouri. To this report exceptions were filed wherein attack was made (R. 7.) on assessment of such intangible personal property of a non-resident decedent for inheritance tax in violation of the Fourteenth Amendment of the Constitution of the United States. It was conceded at all times that inheritance tax on the land in Missouri was a proper tax for the State of Missouri to impose. An instrument was also filed praying the court to direct the administrator in Missouri to release the evidences of debt to the executor of the will in Illinois (R. 24). The probate court in Missouri approved the report (R. 17.). Upon appeal the Circuit Court of Lewis County, Missouri, set aside that part of the ruling of the probate court that held that the intangible personal property of the non-resident decedent was not taxable for inheritance tax purposes in Missouri (R. 27.). Upon appeal by the State of Missouri to the Supreme Court of the State of Missouri, that court held that regardless of all other questions that intangible personal property of a non-resident decedent was within the jurisdiction of

Missouri, under the Missouri statute imposing inheritance tax, if any evidences of debt were found in Missouri, and further placing its decision on the ground that the debtors resided in Missouri when the record shows that some of the debtors of decedent were non-residents of Missouri (R.14.). The constitutional question was early raised in the case and has been preserved throughout. This is shown not only by the record (R.15.) but by the decision in the court's concurring opinion (R.57). The rulings below are such as to bring the case within the jurisdictional provisions relied on. The rules of law violated by the decision of the Supreme Court of Missouri, are set out with citations below.

IV.

An attempt by a state statute to tax tangible personal property having an actual situs in another state contravenes the due process of law clause of the Fourteenth Amendment and is invalid.

Frick v. *Pennsylvania,* 268 U. S. 473, l. c. 496.
Union Refrigerator Transit Co. v. *Kentucky,* 199 U. S. 194.

On the subject of the intangible personal property being within the jurisdiction of Missouri, the rules laid down for *property tax* must, by the most recent rulings of this court, be authority for determining what property is within the jurisdiction of Missouri for *transfer tax.*

Rhode Island Hospital Trust Co. v. *Doughton,* 270 U. S. 69, l. c. 80:

"but the principle that the subject to be taxed must be within the jurisdiction of the state

applies as well in the case of transfer tax as in that of a property tax."

The situs of intangible personal property is with the debtor and can have no other situs.

Buck v. *Beach*, 206 U. S. 392.
State Tax on Foreign Held Bonds, 15 Wall. 300, 21 L. Ed. 179.

The maximum of *mobilia sequenter personam* has during the year 1928 been applied by this court to intangible personal property in a transfer tax case, and has been said to be settled within this jurisdiction.

Blodgett, Tax Commissioner of Connecticut v. *Silberman, et al.*, 277 U. S. 1, Nos. 190 and 191, decided April 16, 1928, 48 S. Ct. 410.

Bank deposits, bonds and promissory notes are intangible personal property.

Rhode Island Hospital Trust Co. v. *Doughton*, 270 U. S. 69.
Blodgett, Tax Commissioner of Connecticut v. *Silberman, et al., supra.*

The recent rulings of this court have been calculated to check the tide of exacting by states, revenue under the guise of inheritance tax to the point of confiscating estates. Hence *Frick* v. *Pennsylvania, supra*, prevents two states exacting inheritance tax on the same property as violative of due process, and places the state of the situs of the property as the jurisdiction for the tax, and the situs is where the tangible property is actually situated. It is also held by this court by the cases cited above that bonds, bank de-

posits and promissory notes are intangible personal property and that the situs of the intangible personal property is with the debtor. The question is then presented, is it not, just as much a violation of due process of law to tax intangible personal property in many jurisdictions in addition to the situs as to thus tax tangible property.

The case of *Blodgett* v. *Silberman, supra,* expressly declines to pass upon the authority of a state not of the domicile to tax intangibles, postponing the date of determining that particular question.

Justice Holmes in writing a separate concurring opinion in the case of *Wachovia Bank & Trust Co.* v. *Doughton,* 272 U. S. 567, then dealing with a case passing on transfer tax upon intangible personal property, expressed doubt that the opinion in the case of *Frick* v. *Pennsylvania, supra,* could be reconciled with the earlier holdings on the point.

The holdings of the highest courts of the States of Illinois and Missouri, it is submitted, are in accord, save and except the case at bar, with our contention.

The People v. *Foreman,* 322 Ill. 223.

In re Zook's Estate, 317 Mo. 986.

State ex rel. American Central Ins. Co., v. *Gehner,* Missouri Supreme Court (not yet officially reported), No. 27495, decided July 30, 1928, found in 9 S. W. (2) 621.

State ex rel. American Auto Ins. Co. v. *Gehner,* Missouri Supreme Court (not yet officially reported), No. 27492, decided July 3, 1928, found in 8 S. W. (2) 1057.

Respectfully submitted,

JOHN F. GARNER,
Counsel for Appellants.

HARRY CARSTARPHEN,
Of Counsel.

FILE COPY

Office Supreme Ct. U. S.
JAN 9
CHARLES

No. 417.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

THOMAS A. BALDWIN, THOMAS A. BALDWIN, EXECUTOR OF THE WILL OF CARRIE POOL BALDWIN, ET AL., ETC., PLAINTIFFS IN ERROR AND APPELLANTS,

VS.

STATE OF MISSOURI.

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF, COMPILED AND FORMULATED TO SHOW CAUSE WHY THE WRIT OF ERROR AND THE APPEAL HEREIN SHOULD NOT BE DISMISSED FOR WANT OF A FINAL JUDGMENT.

JOHN F. GARNER,
Counsel for Appellants.

HARRY CARSTARPHEN,
Of Counsel.

(34548)

(34548)

SUPREME COURT OF THE UNITED STATES.

October Term, 1929.

No. 417.

Thomas A. Baldwin, Thomas A. Baldwin, Executor of the Will of Carrie Pool Baldwin, et al., etc., Plaintiffs in Error and Appellants,

vs.

State of Missouri.

In Error to and Appeal from the Supreme Court of the State of Missouri.

SUBJECT INDEX.

Purpose of Special Brief 2
Statement 3
Brief and Argument 5-11
Conclusion 11
Appendix 13-15

TABLE OF CASES CITED.

Chesapeake & Potomac Telephone Co. vs. Manning, 186 U. S. 238 9
Gulf Refining Co. of La., et al., vs. United States, 269 U. S. 125 ..... 9, 11
In re Hamill's Estate, 315 Mo. 972 6
In re Taylor's Estate, 5 (2) Southwestern Reporter 457 6

Mergenthaler Linotype Co. vs. Davis, 251 U. S. 256 . . . . . 5, 12
Metropolitan Water Co. vs. Kaw Valley Drainage District, 223 U. S. 519 10
Moore vs. New York Cotton Exchange, et al., 270 U. S. 593 9
Mower vs. Fletcher, 114 U. S. 127 9
Rio Grande Western Railway Co. vs. Stringham, 239 U. S. 44 8
Salomon, et al., vs. State Tax Commission of N. Y., 278 U. S. 484 5
State vs. Baldwin's Estate, 19 (2) Southwestern Reporter 732 2
Wharton vs. Denny, 296 Southwestern Reporter 183 7

TABLE OF STATUTES CITED.

Section 570, Revised Statutes of Missouri 1919 13
Section 572, Revised Statutes of Missouri 1919 14
Section 282, Revised Statutes of Missouri 1919 14
Section 288, Revised Statutes of Missouri 1919 14
Section 289, Revised Statutes of Missouri 1919 14
Section 291, Revised Statutes of Missouri 1919 . . . . 7, 15
Section 1520, Revised Statutes of Missouri 1919 . . 10, 15
U. S. C. A., Title 28, Section 344 8

No. 417.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

THOMAS A. BALDWIN, THOMAS A. BALDWIN, EXECUTOR OF THE WILL OF CARRIE POOL BALDWIN, ET AL., ETC., PLAINTIFFS IN ERROR AND APPELLANTS,

VS.

STATE OF MISSOURI.

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF, COMPILED AND FORMULATED TO SHOW CAUSE WHY THE WRIT OF ERROR AND THE APPEAL HEREIN SHOULD NOT BE DISMISSED FOR WANT OF A FINAL JUDGMENT.

The opinion of the court below, the Supreme Court of the State of Missouri, which is not yet officially reported, was rendered on June 29, 1929 (rehearing denied August 2, 1929), and bears No. 28664. The case

may be found printed in 19 (2) South Western Reporter 732 to 740, where it is styled *State* v. *Baldwin's Estate,* also see printed Transcript of Record herein, pages 30 to 47.

To definitely recognize and present the question of final judgment in the light of the law and practice of the State of Missouri, we quote the directing portion of the opinion of the court below, and also of the concurring opinion. From the opinion of the Supreme Court of the State of Missouri (Printed Transcript of Record page 30, local citation 37):

> "The judgment is reversed and the cause remanded with directions to the trial court to proceed in accordance with this opinion."

From the concurring opinion (Printed Record 38, loc. cit. 47):

> "For the reasons stated, so much of the judgment of the circuit court in this case is reversed which holds that the intangible personalty in this state belonging to the estate of Carrie Pool Baldwin is not subject to the payment of an inheritance tax; and the court is directed to enter up a judgment in conformity with this opinion."

STATEMENT.

The State of Missouri, under its inheritance tax law, seeks to tax the intangible personal property of a nonresident decedent.

Carrie Pool Baldwin died in Quincy, Illinois, on October 4th, 1926, a resident of Illinois. Her will was probated in Illinois and ancillary letters of administration with will annexed were issued in Lewis County, Missouri, on October 22nd, 1926. The estate consisted of lands in the States of Illinois and Missouri and intangible personal property in the form of notes, bonds and bank deposits.

The Probate Court of Lewis County, Missouri, rendered judgment taxing the transfer of not only the lands but also the intangible personal property. This judgment was by way of approving the report of the appraiser by that court. Exceptions were filed in the probate court by the legatee under the will and the administrator with will annexed in Missouri making attack upon the judgment and Missouri statute on the grounds of violation of due process, denying equal protection of the law, and abridging the privileges of the citizens of the United States and of the states, all as guaranteed by the Constitution of the United States, which motion was overruled and the case was, on appeal to the Circuit Court of Lewis County, Missouri, tried anew to the result that the trial court found that the intangible personal property of a non-

resident decedent was not taxable in Missouri. The cause was thereon by the State of Missouri appealed to the Supreme Court of Missouri, where the Supreme Court of Missouri in effect (R. 30 to 47) affirmed the judgment of the Probate Court of Lewis County, Missouri, and remanded the case and directed that judgment be entered up in accordance with the opinion of the Supreme Court. The final judgment was of the highest court of the state, being, under the circumstances, that of the Supreme Court of Missouri.

BRIEF AND ARGUMENT.

The state practice and laws control the question of whether the judgment is final.

The state laws and practice shall control for determination of the question of final judgment in the state court.

Mergenthaler Linotype Co. v. *Davis,* 251 U. S. 256, loc. cit. 258:

> "Under the Missouri practice and circumstances here disclosed, we think the judgment of the Springfield Court of Appeals was final within the meaning of Section 237, Judicial Code, (28 U. S. C. A. Section 344). No suggestion is made that further review by the Supreme Court could be had, as matter of discretion or otherwise."

Salomon et al. v. *State Tax Commission of N. Y.,* 278 U. S. 484, loc. cit. 486:

> "By the remittitur it became the judgment of the Surrogate's Court. That judgment is final within the meaning of 28 U. S. C. A. Section 344."

Missouri practice, laws and statutes on final judgment appealed from probate court.

Under the laws of Missouri the inheritance or transfer tax upon the estate of a decedent shall be determined in that probate court where letters testamentary are issued (see Section 570, Missouri Statutes, in Appendix hereof, page 13).

An appeal lies from the judgment of the probate court fixing inheritance tax as in other civil actions (see Section 572, Missouri Statutes, in Appendix hereof, page 14).

Appeals lie generally from the probate courts of Missouri to the circuit courts (see Section 282, Missouri Statutes, in Appendix hereof, page 14).

Upon appeal from the probate court the clerk thereof is required to make a transcript of the record and proceedings and send the same with the original papers to the circuit court thereof where the case is determined anew. Thereupon and after determination in the circuit court the clerk of the circuit court certifies back the original papers and record to the probate court "who shall proceed according to the decision of the circuit court" (see Sections 288, 289 and 291, Missouri Statutes, in Appendix hereof, page 14).

It is the settled law of Missouri that under Section 291 of the Revised Statutes of Missouri 1919, the case must be remanded with directions to proceed according to the decision (in the appellate court commonly called an opinion) of the circuit court. When (in a case involving an appeal from a probate court) an appeal is perfected from the circuit court to an appellate court of the State of Missouri the appellate court determines the law for and in the stead of the circuit court, hence remands the case to the circuit court with directions that the circuit court may in turn remand the case to the probate court with directions.

In re Hamill's Estate, 315 Mo. 972.

In re Taylor's Estate, not yet officially reported, decided by St. Louis Court of

Appeals on May 1, 1928, Nos. 20115 and 20116, printed in 5 (2) South Western Reporter 457, loc. cit. 461.

"It is well settled in our jurisprudence (see the late case of *In re Hamill's Estate,* 315 Mo. 972), that, under Sections 289, 291, Revised Statutes of Missouri of 1919, the circuit court on appeal from the probate court, must make definite findings and *directions* for procedure in the probate court. It is further stated in that case that it is the judgment of the circuit court which determines and defines the rights of the parties; that determination having been made and entered of record the clerk of the circuit court is required, under Section 291, R. S. 1919, to 'certify a transcript of the record and proceedings and the original papers to the court whence the appeal was taken, who shall proceed according to the decision of the circuit court.' For that purpose, the judgment of the circuit court should be definite in its findings and in its directions, so as to inform the probate court how to proceed."

A discussion of the application of the statute (Section 291, R. S. of Mo. 1919) is given by the Supreme Court of Missouri in the earlier case of *State ex rel. Baker* v. *Bird*, 253 Mo. 569, however that case arose on an Original Prohibition in that Supreme Court.

Appeal from Missouri Probate Court must be remanded though affirmed.

Had the Supreme Court of Missouri affirmed this case instead of reversing it in part, it would have, nevertheless, under the laws of Missouri, remanded the cause.

Wharton v. *Denny*, No. 15952, not yet officially reported, decided in Kansas City Court of Appeals on June 6, 1927, opinion by

Commissioner Frank now a member of the Supreme Court of Missouri, and who concurred in the opinion here attacked. Printed in 296 South Western Reporter 183.

It is therefore apparent that the fact that the cause was remanded to proceed in accordance with directions, furnishes no standard whereby to conclude that the matter is not ended by final judgment or decree of the highest court of the State of Missouri.

Only Ministerial Duties Remained to Be Performed.

Where the mandate issued in this case from the Supreme Court of Missouri followed back through the circuit court into the probate court, the same judgment would be rendered by the probate court as was first rendered in that court, that is, that the intangible personal property of the nonresident decedent was subject to inheritance tax the same as Missouri real estate. Thereupon a reentering of the same judgment by the probate court and a series of new appeals resulting in a finding of *res adjudicata* by the Supreme Court of Missouri and a remanding with directions would leave this appellant without right of appeal as appeal should have been from the first judgment. Hence the present judgment is the one to be appealed from.

Rio Grande Western Railway Co. v. *Stringham*, 239 U. S. 44:

> "Manifestly the first judgment was final within the meaning of Judicial Code, Section 237 (28 U. S. C. A. Sec. 344) * * * It disposed

of the whole case on the merits, directed what judgment should be entered, and left nothing to the judicial discretion of the trial court."

The opinion of the Supreme Court leaves open no question for determination by a trial court. The only question on the appeal is the authority of the State of Missouri to tax the intangible personal property of the nonresident decedent. While the opinion states that it would have been a proper subject of inquiry to determine on what condition the evidences of debt were in Missouri, in the same sentence it is stated that such fact made no difference for the intangible personal property *was* subject to inheritance tax in the state regardless. Every subject of inquiry is closed by the opinion, the amount of appraisal is fixed, the law fixes the rate and the matter is closed.

Gulf Refining Co. of La. et al. v. *United States*, 269 U. S. 125, loc. cit. 136:

"The instruction for further proceedings not inconsistent with the opinion, therefore, was equivalent to a direction to render judgment for the net value—that is, for the exact sums set forth in the stipulations. * * * There was no evidence to be taken or considered, and no change in the issue was possible; nothing remained but the ministerial duty of entering a decree for the precise sums which had been fixed beyond the power of alteration. It follows that the jurisdictional objection is without merit."

Moore v. *New York Cotton Exchange, et al.*, 270 U. S. 593.

Chesapeake & Potomac Telephone Co. v. *Manning*, 186 U. S. 238.

Mower v. *Fletcher*, 114 U. S. 127.

In the instant case only the ministerial duty devolved upon the circuit court to certify the original papers back to the probate court from whence they came with a transcript of the record and proceedings. No judicial act was required. Since the clerk of the Supreme Court of Missouri is directed by law to forward a true copy of the opinion to the circuit court from which the case was appealed (Section 1520, R. S. of Missouri 1919, see Appendix hereof, page 15), such opinion would become a part of the proceedings of the circuit court and would thereupon be transmitted to the probate court. It will be remembered that the original judgment in the probate court found the intangible personal property of the nonresident decedent taxable.

The opinion of the Supreme Court of Missouri comprises the mandate.

Under said Section 1520, R. S. of Missouri, 1919, it is to be observed that the opinion of the Supreme Court of Missouri is or constitutes the body of the mandate. The opinion of the court and the concurring opinion constitutes a straight forward direction to the circuit court "to proceed according to this opinion." The concurring opinion directs "to enter up judgment in conformity with this opinion." Nothing was left for the circuit court and probate court to do but enter up judgment.

Metropolitan Water Co. v. *Kaw Valley Drainage District*, 223 U. S. 519.

Gulf Refining Co. of La. v. *United States*, 269 U. S. 125, loc. cit. 135:

> "But the direction to proceed consistently with the opinion of the court has the effect of making the opinion a part of the mandate, as though it had been therein set out at length."

Conclusion.

There are numerous cases of the Supreme Court of the United States, seeking to lay down a test of final judgment applicable to all cases and situations, that have suggested that when the word *proceed* is used upon the remanding of the case that such word characterizes judicial discretion in the court *nisi*. As perfect as that rule may be when applied to situations apart from state statutes, it will be observed that it does not apply in the case at hand because the statutory law of Missouri (Section 291, Missouri Statutes 1919, see Appendix page 15), reads "shall *proceed*" according to the decisions. From the cases cited herein above it will be seen that this statute has been construed in accordance with its plain language, and that in every instance of appeal from the probate court in Missouri, whether the matter is affirmed or reversed, it must be remanded to *proceed*. Therefore if the test that some of the opinions of the Supreme Court of the United States adopt might be construed to the effect that the word *proceed* when contained in a judgment in connection with the remanding of the case means that the judgment is not final, there could never

be a final judgment in the courts of the State of Missouri on a matter of appeal from a probate court.

Of necessity, this court in determining the jurisdiction of the highest court of the state must look to the state statute and the opinions of the court construing such statute to ascertain if the judgment is final by the highest court of the state.

Mergenthaler Linotype Co. v. *Davis*, 251 U. S. 256.

It is therefore respectfully submitted that the judgment is final and this court has jurisdiction.

JOHN F. GARNER,
Counsel for Appellant.

HARRY CARSTARPHEN,
Of Counsel.

APPENDIX.

(A revision of the Missouri Statutes was made by the 1929 General Assembly of Missouri, but it is not yet published and distributed.)

The following citations of Missouri Statutes are by section number of the 1919 Revised Statutes of Missouri with reference to the Session Acts where amendments have been made and published in the Session Acts by the biennial sessions of the General Assembly.

Section 570, Revised Statutes of Missouri 1919, Chapter 1, Article XXI, amended 1921, Session Acts 1921, page 672:

> "*The probate court* which grants letters testamentary or of administration, either original or ancillary, on the estate of any decedent, shall have jurisdiction to determine the amount of the tax provided for in this act and the person, persons, association, institution or corporation liable therefor, and to determine any question which may arise in connection therewith, and to do any act in relation thereto which is authorized by law to be done by such court in other matters or proceedings coming within its jurisdiction. Such court or the judge thereof in vacation shall immediately upon the filing of the inventory and appraisement of the estate of a decedent, examine the same, and if it is apparent, in the opinion of the said court or judge, that such estate is not subject to the tax provided for in this act, such finding and opinion shall be entered of record in said court * * *" (italics ours).

Section 572, Revised Statutes of Missouri 1919, Chapter 1 Article XXI:

"Any interested person, including the state treasurer, attorney general or prosecuting attorney of the county may file exceptions to the report of the appraiser within thirty days after the time same is filed, specifically pointing out his or their objection thereto, and such exception shall be determined by the court in a summary manner. Any person aggrieved by the judgment of the court as to the amount of liability for the tax may appeal to the court having jurisdiction of appeals from said court *in ordinary civil actions* * * *" (italics ours).

Section 282, Revised Statutes of Missouri 1919, Chapter 1, Article XII:

"Appeals shall be allowed from the decision of the probate court to the circuit court, in the following cases: First, * * * fifteenth, and in all other cases where there shall be a final decision of any matter arising under the provisions of Articles I to XIII, inclusive, of this chapter. And the right of appeal herein provided for shall extend to any heir, devisee, legatee, creditor, or other person having an interest in the estate under administration."

Section 288, Revised Statutes of Missouri 1919, Chapter 1, Article XII:

"When such appeal is taken the clerk shall transmit to the clerk of the circuit court or other court having appellate jurisdiction in the county, a certified transcript of the record and proceedings relating to the case, together with the original papers in his office relating thereto."

Section 289, Revised Statutes of Missouri 1919, Chapter 1, Article XII:

"Upon the filing such transcript and papers in the office of the clerk of the circuit court or

other court having appellate jurisdiction in the county, the court shall be possessed of the cause, and shall proceed to hear, try and determine the same anew, without regarding any error, defect or other imperfection in the proceedings of the probate court."

Section 291, Revised Statutes of Missouri 1919, Chapter 1, Article XII:

"The clerk of the circuit court or other court shall certify a transcript of the record and proceedings and the original papers to the court whence the appeal was taken, who shall proceed according to the decision of the circuit court."

Section 1520, Revised Statutes of Missouri 1919, Chapter 12, Article XVI:

"The clerk of the supreme court shall, when the opinion of the court is filed in his office, indorse thereon the day on which it is filed, and enter the same on his minutes, and shall within thirty days thereafter, make a true copy thereof, and shall transmit the same without delay to the circuit court or other court from which the same was taken."

FILE COPY

Office Supreme Court,
FILED
MAR 24 193
CHARLES ELMORE CRO
CLE

No. 417.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

THOMAS A. BALDWIN, THOMAS A. BALDWIN, EXECUTOR OF THE WILL OF CARRIE POOL BALDWIN, AND HARRY CARSTARPHEN, ADMINISTRATOR OF THE ESTATE OF CARRIE POOL BALDWIN WITH WILL ANNEXED, APPELLANTS,

VS.

STATE OF MISSOURI, APPELLEE.

In Error To and Appeal From The Supreme Court of The State of Missouri.

BRIEF ON THE MERITS IN SUPPORT OF ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI.

John F. Garner,
Counsel for Appellants.

Harry Carstarphen,
Of Counsel.

(34548)

INDEX

Subject Index.

Brief in Support of the Merits—

I. Reference to Opinions of the Court Below 1
II. Jurisdiction 2
III. Statement of the Case 2
IV. Specifications of Error 6
V. Argument 8

Summary of Argument—

Points on Opinion Below Holding Statute Valid 9
Character of Property 15
Succession Tax Only at Legal Situs 17
Domicile of Owner is Legal Situs of Intangible Property 20
Necessity for Constitutional Limitations .. 23
Physical Presence of Paper Evidence 26
No Business Situs in Missouri 28
On Inventory in Missouri 29
Land Mortgage Security Not Fix Situs .. 31

Conclusion 35

Table of Cases Cited.

Blackstone vs. Miller, 188 U. S. 189 ..... 10, 11, 33, 34
Blodgett vs. Silberman, 277 U. S. 1 .. 16, 17, 20, 27, 32, 35
Buck vs. Beach, 206 U. S. 392 27
Chadwick vs. State, 133 Minn. 117 34
Farmers' Loan & Trust Co. vs. Minnesota, 280 U. S. 204 ..... 11, 17, 18, 19, 20, 22, 24, 26, 29, 33
Frick vs. Pennsylvania, 268 U. S. 473 ..... 17, 24, 25
In Re Ward's Estate, 133 Minn. 117 34

International Paper Co. vs. Massachusetts, 246 U. S. 135 24
Kirtland vs. Hotchkiss, 100 U. S. 491 .....32, 35
Louisville & Jacksonville Ferry Co. vs. Kentucky, 188 U. S. 385 25
McCullough vs. Maryland, 4 Wheaton 316 23
McLaughlin vs. Cluff, 66 Utah 245 34
Missouri Real Estate & Loan Co. vs. Gibson, 282 Mo. 75 32
People vs. Foreman, 322 Ill. 223 21
Rhode Island Hospital Trust Co. vs. Doughton, 270 U. S. 69 .....13, 15, 17, 18, 20
Safety Deposit & Trust Co. vs. Virginia, 280 U. S. 83 18
State of Missouri vs. Baldwin's Estate, 19 S. W. 732 (R. 30-47) 11, 12
State Tax on Foreign Held Bonds, 15 Wall. 300 .....16, 20, 24
United States vs. Bennett, 232 U. S. 299 24
Wachovia Bank & Trust Co. vs. Doughton, 272 U. S. 567 24

TABLE OF STATUTES CITED.

Section 558, Revised Statutes of Missouri 1919 .....3, 5, 6, 7, 9, 13, 37
Section 564, Revised Statutes of Missouri 1919 ..30, 38
Section 565, Revised Statutes of Missouri 1919 ..29, 38
Section 568, Revised Statutes of Missouri 1919 ..29, 39
Section 571, Revised Statutes of Missouri 1919 ..30, 41
Section 573, Revised Statutes of Missouri 1919 ..30, 41

TEXT BOOKS AND ENCYCLOPEDIAS CITED

Cooley on Taxation, 1st Ed. 15, 63, 134, 270 33
Cooley on Taxation, 2nd Ed. p. 159 25
7 Corpus Juris 628 16

No. 417.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

THOMAS A. BALDWIN, THOMAS A. BALDWIN, EXECUTOR OF THE WILL OF CARRIE POOL BALDWIN, AND HARRY CARSTARPHEN, ADMINISTRATOR OF THE ESTATE OF CARRIE POOL BALDWIN WITH WILL ANNEXED, APPELLANTS,

VS.

STATE OF MISSOURI, APPELLEE.

In Error To and Appeal From The Supreme Court of The State of Missouri.

BRIEF ON THE MERITS IN SUPPORT OF ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI.

I.

OPINIONS OF THE COURT BELOW.

The opinion in the Supreme Court of Missouri (not yet officially reported) is found in 19 South West-

ern Reporter (2) 732. The case is styled *State* v. *Baldwin's Estate* and bears number 28664 in the Supreme Court of Missouri, and was decided there by the court *en banc* on June 29, 1929. The opinion is set out in full in Printed Transcript of Record here at page 30 thereof, and the concurring opinion at page 38 thereof.

II.

JURISDICTION.

1. The date of the judgment to be reviewed is June 29, 1929 (R. 29). The motion for rehearing in the state court was denied on date of August 2, 1929 (R. 49).

2. The requirements of paragraph 1 of Rule 12, of the rules of this court, have been heretofore complied with by jurisdictional statement filed with the clerk of this court on November 4, 1929.

3. Jurisdiction has further been shown by brief filed herein on January 30th, 1930, to show cause in relation to final judgment under the state laws of Missouri and passed upon by order of this court on February 24th, 1930.

III.

STATEMENT OF THE CASE.

(Page references are to the printed transcript of the record.)

Carrie Pool Baldwin died testate in Quincy, Illinois, on October 4, 1926, a resident of Illinois (R.

30). Her will was probated in the State of Illinois and Thomas A. Baldwin, her only heir and the only legatee under the will, was appointed executor as provided by the will (R. 30). Inheritance tax was imposed and collected by the State of Illinois upon the land situated in Illinois and *all* of her intangible personal property (R. 27, 28). Ancillary letters of administration with will annexed were issued in Missouri, certain land being situated in Missouri (R. 11). Her estate consisted of land in the State of Illinois (R. 24) and Missouri (R. 12), which passed by the will, and intangible personal property of the decedent in the form of bank accounts, government bonds and promissory notes, both secured and unsecured, due from both residents of Missouri and nonresidents of Missouri (R. 4, 12).

Under Section 558 of the statutes (1919) of Missouri (see appendix hereof 37), designed to find taxable property, certain evidences of debt due the nonresident decedent were discovered in Missouri, and obedient to the command of the state statute were reported in course to the State Treasurer. This was all subsequent to the date of her death. The heir and the executor of the will of the domicile filed motion in the probate court in Missouri (which court had charge of the ancillary administration) praying the court to direct the administrator in Missouri to release the evidences of debt to the executor of the will in Illinois, which motion was overruled (R. 9).

An inheritance tax appraiser of Missouri appraised the debts due the nonresident decedent in the form

of bank accounts, government bonds and notes (R. 11), evidences whereof were found in Missouri. To this report exceptions were filed by the legatee under the will and the Missouri administrator, wherein attack was made on the assessment of such intangible property of a nonresident for inheritance tax in violation of the Fourteenth Amendment and Section 2 of Article 4, of the Constitution of the United States (R. 4). It was conceded at all times that inheritance tax on land in Missouri was a proper tax for the State of Missouri to impose (R. 16). The Missouri probate court approved the appraiser's report (R. 9) notwithstanding the exceptions filed thereto.

Upon appeal by the legatee under the will and the Missouri administrator the circuit court of Lewis County, Missouri, set aside that part of the judgment and ruling of the probate court that held that the intangible personal property of a nonresident decedent was taxable for inheritance tax purposes in Missouri (R. 1), and said judgment rendered in the circuit court of Lewis County, Missouri, excluded inheritance tax on the intangible personal property of the nonresident decedent sought to be taxed by the State of Missouri.

From the judgment of the circuit court the State of Missouri, through its officers and agents, lodged an appeal in the Supreme Court of Missouri (R. 10). That court thereupon, by its opinion and judgment (R. 30 to 47), held that regardless of all other questions intangible personal property of a nonresident decedent was within the jurisdiction of Missouri if any evidences of debt were found in Missouri, and subject to the

state inheritance tax under the Missouri statute. The portion of the statute that is material here is thus:

> "A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or any interest therein, or income therefrom, in trust or otherwise, to persons, institutions, associations or corporations—when the transfer is by will, or intestate law of property within the state, or within the jurisdiction of the state and the decedent was a nonresident of the state at the time of his death." Section 558, Revised Statutes of Missouri, 1919.

(The complete section is set out in the appendix 37).

The opinion and judgment of the Supreme Court of Missouri was handed down on June 29th, 1929. Motion for rehearing was duly and timely filed, which motion was overruled by the Supreme Court of Missouri on August 2, 1929. Thereupon writ of error and appeal to the Supreme Court of the United States was timely procured and effected.

Of the items of the intangible personal property of the nonresident decedent, sought to be taxed by the State of Missouri upon transfer, some of the debtors were residents of the State of Missouri and some were nonresidents of the State of Missouri, some of the debts were secured by land in Missouri and some of the debts were unsecured (R. 8). The bank deposits in the amount of $17,015.75 were ordinary unsecured deposit accounts (R. 5), and the government bonds were registered noncoupon bonds (R. 5).

The Federal Constitution question was early raised in the case and has been preserved throughout

(R. 8, 9). The record is barren of any evidence or indication that a business situs was established in Missouri in any manner concerning any of the intangible personal property, nor did the State of Missouri as a litigant in the case ever undertake to show a business situs in Missouri as to any of the property. The questions presented by this appeal resolve themselves into a general query: May the State of Missouri assess an inheritance tax on intangible personal property of a nonresident decedent whose estate is duly administered upon by principal administration in the state of the domicile, and which said state of the domicile has duly assessed an inheritance tax on the same intangible personal property, where there is no business situs established in Missouri, even though certain evidences of debt may be found in Missouri, without being in direct conflict with the Fourteenth Amendment to the Constitution.

IV.

SPECIFICATIONS OF ERRORS.

1. The Supreme Court of Missouri below erred in finding and holding valid Section 558, Revised Statutes of Missouri, 1919 (Appendix p. 37), because said statute undertakes to impose inheritance tax upon intangible personal property of a nonresident decedent repugnant to the Fourteenth Amendment of the Constitution of the United States, to-wit: (a) Deprives of property without due process of law; (b) Denies

equal protection of the law; (c) Effort of one state to abridge the privileges and immunities of citizens of the United States.

2. The Supreme Court of Missouri below erred in finding and holding valid Section 558, Revised Statutes of Missouri, 1919 (Appendix p. 37), because the law is as announced by the decisions of this court (Supreme Court of the United States) that under the Constitution of the United States it is a violation of due process of law for two states, or all of the states, of the United States to tax the transfer or inheritance of the same property; and further because inheritance tax may now be exacted by but one state, and that is in this instance the State of Illinois, the situs of the property.

3. The Supreme Court of Missouri erred in sustaining the inheritance or transfer tax and imposing such tax upon intangible personal property owned by a nonresident decedent which passes by will to her son, a nonresident, and further because the same property passes but once and in but one state, which is, in the case of intangible personal, the state of the domicile of the decedent.

V.

ARGUMENT.

SUMMARY OF ARGUMENT.

POINT A.

The decision below is contrary to the record and the law.

POINT B.

The state statute involved may not, consistent with constitutionality, embrace intangible personal property of a nonresident decedent, which property has but one situs and there only may succession tax be imposed, and the domicile of the owner is the legal situs and taxable jurisdiction of intangible personal property.

POINT C.

Had not limitations been imposed by the Fourteenth Amendment of the Federal Constitution upon the taxing authority of the various states, commercial intercourse could not be carried on absent state treaties.

POINT D.

The physical presence of paper evidences of debt in Missouri does not fix the situs of the property there. There is no business situs under the facts established in Missouri and the court below does not find there

is. Inventory impelled under penalty by the state statute may not be means used by the state to acquire taxing jurisdiction, nor will the fact that the debt is secured by a land mortgage in the form of a lien only avail to fix the situs contrary to the domicile.

POINT A.

Short Survey of the Points in Opinion Below Holding Missouri Statute Constitutional.

The leading opinion of the Supreme Court of the State of Missouri herein holds that the State of Missouri may impose inheritance or succession tax upon the intangible personal property of a non-resident decedent, where evidences of debt are found in Missouri, without violating the Fourteenth Amendment of the Federal Constitution. The statute of Missouri sustained as being valid and not in violation of the Federal Constitution is Section 558 of the Revised Statutes of Missouri, 1919 (Appendix p. 37), the material parts of which statute are as follows:

> "Where the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of this state. When the transfer is by will, or intestate law of property within the state or within the jurisdiction of the state and decedent was a non-resident of the state at the time of his death."

a. The court does not find and the facts do not justify or even indicate that there was a business situs of the property in the State of Missouri, notwithstanding the leading opinion contains speculation and recital

in this connection. The leading opinion of the court below also states and holds that if evidences of debt were in Missouri, they had to be in the hands of some agent. The suggestion or inference that the administrator was the agent does not take account of the fact that no administrator could have been in existence at the time of the death, hence the administrator could not have been the agent. A safety deposit vault may be said to be an agency for safe keeping but it would be enlarging upon the meaning of the words to say that because papers were in a safety deposit box or vault, the bank or institution controlling the vault was agent of the non-resident owner and hence the debts, of which the papers were evidence, had a business situs in the state. The question of business situs calls for a more extended consideration later in this brief.

b. The underlying theory of the decision in the state court below is that the situs of the property is in Missouri because the debtor lives in the State of Missouri and resort would have to be made to the Missouri courts to collect the debt, and for authority cites cases from the various state courts with the fountain source of all of them in *Blackstone* v. *Miller*, 188 U. S. 189 (it is not correct that the debtor in each instance resides in Missouri (R. 8)).

The concurring opinion of the state court below states (R. 43) that the case of *Blackstone* v. *Miller*, *supra*, goes:

> "upon the theory that money on deposit in a bank is the same in effect, as if the testator had placed the money in a deposit vault, and that,

therefore, it is property left by him within the state. It may be observed, however, that the argument, at least, of the United States Supreme Court in the Blackstone case, affirms the power of the state of the *debtor's* domicile to exact a tax, even in respect to ordinary debt" (italics ours).

Mindful that the case of *Blackstone* v. *Miller* was expressly and definitely overruled in *Farmers' Loan & Trust Co.* v. *State of Minnesota,* 280 U. S. 204, the above quotation is set forth to point out the underlying reasoning and theory of construction by the state court of the constitutionality of the Missouri statute, Section 558.

c. In the concurring opinion below, after having construed the statute to be broad enough to cover the intangible personal property of the non-resident decedent, the court says, "it remains to be determined whether from the nature of the property or from constitutional or other considerations, the statute may be held to apply in the case at bar" (R. 40). "The validity, thereof, under the constitution, state and federal, of the statute authorizing the imposition of inheritance tax under the facts in the case at bar, is of moment in the determination of this case" (R. 41). In paragraph IV of said concurring opinion (R. 43) the court holds that the statute is not in violation of the provision of the state or federal constitution "that no person shall be deprived of property without due process of law." To the same effect is paragraph VII of the concurring opinion (R. 45, 46).

That the said section, 558, is in violation of the Fourteenth Amendment of the Constitution of the

United States we seek to show by authorities and argument later in this brief.

d. The opinion of the Supreme Court of the State of Missouri attempts to justify its holding by saying, though the property is not within the state it is "within the jurisdiction" of the state. This might aid in determining the extent to which the legislature has attempted to go in enactment but when weighed against the constitutionality, that is, when tested by due process, the state's restriction is not enlarged by adding thereto the words "within the jurisdiction."

Evidences of debt (such as notes) belonging to a resident of California passing east over Missouri by air route (not mail) are for strained point of construction within the jurisdiction of Missouri. Under Missouri interpretation of its statute, the death of the owner in California while the air conveyor was refueling in Missouri, would subject the securities to the statute, and the *State of Missouri* v. *Baldwin,* (19 S. W. (2) 732) would be authority therefor. Quoting from the opinion: "It would have been a proper subject of inquiry by the trial court how and why and under what conditions these evidences of debt were in this state, *but, whatever the determination of that question, the property was legally within the jurisdiction of—this state and subject to the tax*" (R. 37). The ruling is that regardless of how the evidences of debt came into Missouri, or regardless of the conditions under which they were in Missouri, any presence of the evidences of debt in Missouri made the intangible property of the non-resident decedent subject to inheritance tax of that state.

It is not another way of saying that the statute violates due process, to say, as does the opinion of the state court below: "That such double taxation is inequitable and should be remedied by statute does not affect the legal right to impose the tax. We are obliged to declare the law as the law makers have enacted it" (R. 37). Such words in an opinion of a state court construing a state statute do violence to the restriction: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" (Fourteenth Amendment of Federal Constitution).

The court below seeks to gather from the words of the statute, Section 558, a distinction between property "within the state" and "property within the jurisdiction of the state." Such a construction of the statute of course cannot aid to evade the mandate of the Fourteenth Amendment of the Federal Constitution. Under the said Fourteenth Amendment property "within the state" and property "within the jurisdiction of the state" must be the same thing, otherwise many states might claim situs of the same property and consequently each impose a succession tax. A complete answer to the Supreme Court of the State of Missouri on the distinction between "within the state" and "within the jurisdiction of the state" may be found in the quotation below.

Rhode Island Hospital Trust Co. v. *Doughton*, 270 U. S. 69, loc. cit. 80:

"It goes without saying that a state may not tax property which is not within its territorial jurisdiction" (citations loc. cit. 81).

"In the matter of intangibles, like choses in action, shares of stock, and bonds, the situs of which is with the owner, transfer tax of course may be properly levied by the state in which he resides."

The authority of the State of Missouri may not be enlarged by the use of the term in her statute "within the jurisdiction of the state."

e. The opinion of the Supreme Court of Missouri hereinbelow concedes that, for the purpose of *property* tax on intangible personalty, the situs of the thing taxed is the domicile of the creditor and that another state not of the domicile may not impose a *property* tax thereon, for the thing of value, *i. e.*, the debt is not within the jurisdiction of any other state, and it would be unconstitutional and a violation of due process for a state not of the domicile to impose such *property* tax (R. 32). The opinion goes on to say however in effect that though that rule is well grounded in historic development of judicial meditation as to *property* tax, yet the rule is not applicable to transfer or inheritance tax. Viewed in the light of violation of due process of the Fourteenth Amendment, property tax and succession or inheritance tax may not be separated. The property is taxable in one place and the succession is taxable in one place.

In the latest expression of this court that we find, the tests for determining jurisdiction of the state is the same for both property tax and succession tax.

Rhode Island Hospital Trust Co. v. *Doughton*, 270 U. S. 69, loc. cit. 80:

> "The tax here is not upon property, but upon the right of succession to property, but the principle that the subject to be taxed must be within the jurisdiction of the state applies as well in the case of a transfer tax as in that of a property tax. A state has no power to tax the devolution of the property of a non-resident unless it has jurisdiction of the property devolved or transferred."

After recognition, in the state court hereinbelow, that the situs of intangible personal property for the purpose of *property* tax is with the domicile of the creditor, the court goes on to say:

> "If we could apply the same rule to an inheritance tax, we might have less difficult in disposing of this case" (R. 32).

The line of jurisdiction to tax may not be drawn in one place for property tax and in another for succession or transfer tax. What cannot be done directly may not be done indirectly.

POINT B.

The Character of the Property.

The evidences of debt here involved are of three kinds: bank deposits, government bonds and promissory notes. The bank deposits are evidenced by the books of the bank. This is nothing more than the personal record kept by an ordinary debtor on an open account. That a bank deposit is an ordinary debt is no longer an unsettled question.

Blodgett v. *Silberman*, 277 U. S. 1, loc. cit. 18:

"Among the other items is a savings account in New York which is certainly a choses in action and was properly treated as subject to the same rule."

7 Corpus Juris, 628:

"Where a general deposit is made, the title to the money deposited passes from the depositor to the bank, and the bank becomes the debtor to the depositor in a like amount. Such deposits possess no trust quality, and in case of failure of the bank the depositor has no right to any preference but shares *pro rata* with the general creditors."

Bonds are not things tangible but are evidences of debt only. A letter acknowledging a debt would fall in the same category. They both acknowledge a debt. A debt is intangible.

Blodgett v. *Silberman*, 277 U. S. loc. cit. 14:

(1928) "We think bonds are not thus distinguishable from other choses in action."

Loc. cit. 17. "The analogy between furniture and bonds cannot be complete because bonds are representative only and are not the thing represented."

Promissory notes have ever been held not things of value in themselves but evidences of debt, the thing of value being the debt. A debt is intangible.

State Tax on Foreign Held Bonds, 15 Wall. 300; 21 L. Ed. 179:

"To call debts property of the debtors is simply to misuse terms. All the property there can be in the nature of things, in debts, belongs to

the creditors to whom they are payable, and follows their domicile wherever that may be. Their debts can have no locality separate from the parties to whom they are due."

Rhode Island Hospital Trust Co. v. *Doughton*, 270 U. S. 69 loc. cit. 81 (1926):

> "In the matter of intangibles, like choses in action, shares of stock, and bonds, the situs of which is with the owner, a transfer tax, of course, may be properly levied by the state in which he resides."

Farmers' Loan & Trust Co. v. *State of Minnesota*, 280 U. S. 204, loc. cit. 211:

> "While debts have no actual territorial situs we have ruled that a state may properly apply the rule *mobilia sequuntur personam* and treat them as localized at the creditor's domicile for taxation purposes."
>
> *Blodgett* v. *Silberman*, 277 U. S. 1.

Intangible personal property is a mere right and the right is the debt and the debt is property with the creditor and follows him inseparably. It may no longer be questioned that the situs of intangible personal property is the domicile of the owner of the choses in action or debt.

Succession Tax May Be Imposed only at the Legal Situs.

It is now held and properly so that the devolution of property is taxable at the actual situs thereof and any effort to tax elsewhere contravenes the due process of law clause of the 14th Amendment of the Constitution of the United States. *Frick* v. *Pennsylvania*, 268 U. S. 473. And further that "intangibles like choses

in action," ordinary debts, as bank deposits and bonds, have their situs with the owner. *Rhode Island Hospital Trust Company* v. *Doughton*, 270 U. S. 69. Therefore ordinary debts due a non-resident decedent have a foreign situs and cannot be taxed for inheritance transfer in Missouri.

Farmers' Loan & Trust Co. v. *State of Minnesota*, 280 U. S. 204.
Safe Deposit & Trust Co. v. *Virginia*, 280 U. S. 83.

The analysis of the question of taxation here strikes at the root of governmental operation. The collection of taxes is necessary for the operation of the government that liberty, life and property may not be impaired. Along with this necessary element of government operation arises between the states the natural avaricious desire that the people and property of other states maintain the institution of state government to relieve natives of that burden. Indulgence of this reaches the point of confiscation of property designed to be protected. The attorney general of Missouri recognizes that it is essential that free commercial intercourse along border lines be encouraged; that a state line not as wide as a street may be a pitfall when use is made of a deposit vault on the other side thereof. The various fictions made use of by the states to tax the intangible personal property of a non-resident decedent would have astounded the law makers who wrote the constitution. They could foresee however that a union of sovereign states could not exist without a parental or superintending control of their

interstate relations, leaving their intrastate concerns to their sovereign authorities.

If the door were opened for a multiplicity of states to impose succession tax on the same property, special officers of each state would be created to see if by some means the state could not exact toll on the transfer of intangible property of non-residents to non-residents, and the result would be that if there was any property within the jurisdiction of the state, for instance, Missouri, such as land, then the land might be subject to the lien of all the theories of succession tax that might be ingeniously designed. To avoid confiscation of property and yet to give full force and effect to constitutional taxing provisions, human rule of action impels that but one state be permitted to tax the devolution of the same property and that state is the state of the legal situs. It follows that Section 558 of the statutes of Missouri violates the Constitution of the United States insofar as it undertakes to impose succession tax upon intangible personal property of the non-resident decedent.

Farmers' Loan & Trust Co. v. *State of Minnesota*, 280 U. S. 204, loc. cit. 212:

> "We have determined that in general intangibles may be properly taxed at the domicile of their owner and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles."

The Domicile of the Owner Is the Legal Situs of Intangible Personal Property.

It may no longer be questioned that the situs of intangible personal property is the domicile of the owner of the choses in action or debt.

Blodgett v. *Silberman*, 277 U. S. 1, loc. cit. 9:

> "At common law the maxim '*mobilia sequunter personam*' applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the state of the domicile or elsewhere, and is so fully sustained by cases in this and other courts, that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not."

State Tax on Foreign Held Bonds, 15 Wall. 300, 320; 21 L. Ed. 179:

> "To call debts property of the debtors is simply to misuse terms. All the property there can be in the nature of things in debts belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due."
>
> *Farmers' Loan & Trust Co.* v. *State of Minnesota*, 280 U. S. 204.

Rhode Island Hospital Trust Co. v. *Doughton*, 270 U. S. 69, loc. cit. 81:

> "In the matter of intangibles, like choses in action, shares of stock, and bonds, *the situs of*

which is with the owner, a transfer tax, of course, may be properly levied by the state in which he resides" (italics ours).

The conflict here being between the State of Illinois and the State of Missouri, we take it is not amiss to direct attention to this last word of the highest court of the State of Illinois on the question of legal situs of intangible personal property and the right to impose succession tax.

The People v. *Forman,* 322 Illinois Reports, 223, loc. cit. 230:

"We attach no significance to the fact that the note was in Iowa under those conditions and not in Illinois in the possession of the payee. The situs of intangible property, to which division of property a promissory note belongs, in contemplation of law is the domicile of the testator. The rule is well established by the decisions of this court and of the United States courts that the situs of intangible property owned by a decedent in his lifetime is the domicile of the decedent, and that an inheritance tax on such property should be assessed at the domicile of the decedent, only, as between the contentions of states over that question, and that promissory notes, etc., are intangible property. (*Davis* v. *Upson,* 230 Ill. 3271; *Cooper* v. *Beers,* 143 Id. 25; *National Reserve Ins. Co.* v. *Shipton,* 314 Id. 472; *People* v. *Blair,* 276 Id. 623; *Frick* v. *Commonwealth of Pennsylvania,* 45 Sup. Ct. Rep. 603.) In the last case cited the Supreme Court of the United States in a well considered case held that tangible personal property was taxable at the situs or place where the property is situated, only, and that intangible property was assessable, under the inheritance tax laws, at the domicile of the testator or of the decedent, only, and that for a state to

doubly tax either character of property in violation of the above rule was in violation of the due process clause of the constitution."

Occasion to resort to the courts of the state claiming the right to tax succession of intangible personal property of the nonresident decedent may not be held as ground to sustain the tax. If tribute may be laid on the privilege of using the courts of a sister state it would lead to disintegration of the union.

Farmers' Loan & Trust Co. v. *State of Minnesota*, 280 U. S. 204:

> "And, while the creditor may rely on Minnesota law to enforce the debt, that may be equally true of the law of any other state where the debtor or his property may be found."

International Text-Book Co. v. *Pigg*, 217 U. S. 91, loc. cit. 111:

> "This court held in *Chambers* v. *Baltimore & Ohio R. R. Co.*, 207 U. S. 142, 148 (28 Sup. Ct. 34, 52 L. Ed. 143), that a state may, subject to the restrictions of the Federal Constitution, 'determine the limits of the jurisdiction of its courts, and the character of the controversies which shall be heard in them.' But it also said in the same case: 'The right to sue and defend in the courts is the alternative of force.' In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the Federal Constitution."

Hence one state may not make its tax gathering procedure a parasite upon the comity between states, whereby to abridge the rights and immunities of citizens of other states.

POINT C.

Necessity of and Reason for the Restriction on Multiple Taxation.

The reason underlying the necessity for the constitutional limitation imposed upon the respective states in reference to power to tax is announced through Chief Justice John Marshall in the early case of *McCullough* v. *Maryland*, 4 Wheaton 316, loc. cit. 431, thus:

> "That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied." • • • l. c. 405. "Though any one state may be willing to control its operations, no state is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason: the people have, in express terms, decided it, by saying, 'this constitution, and the laws of the United States, which shall be made in pursuance thereof,' 'shall be the supreme law of the land,' and by requiring that the members of the state legislatures, and the officers of the executive and judicial departments of the states, shall take the oath of fidelity to it."

This rule is recognized in *United States* v. *Bennett*, (1914), 232 U. S. 299, loc. cit. 306:

> "The application to the states of the rule of due process relied upon comes from the fact that their spheres of activity are enforced and protected by the constitution, and therefore it is impossible for one state to reach out and tax property in another without violating the constitution, for where the power of the one ends the authority of the other begins."

A state is wholly without power to tax property beyond its jurisdiction.

Farmers' Loan & Trust Co. v. *State of Minnesota*, 280 U. S. 204.

International Paper Co. v. *Commonwealth of Mass.* 246 U. S. 135.

State Tax on Foreign Held Bonds, 15 Wall. 300; 21 L. Ed. 179.

Wachovia Bank & Trust Co. v. *Doughton*, 272 U. S. 567.

The most recent consideration by this court of the matter involved concerning the necessity of restricting many states from levying a transfer tax on the same property was in 1925. There this court after deliberate consideration, taking into account the trend of various states to impose succession tax under many theories, held due process of law is violated when a state seeks to impose a tax without the power to impose it.

Frick v. *Pennsylvania*, 268 U. S. 473 loc. cit. 488:

> "There are many decisions dealing with cognate questions which point the way to its solution. These decisions show, first, that the exaction by a state of a tax which it is without power to impose is a taking of property without due

process of law in violation of the 14th Amendment."

Louisville & Jeffersonville Ferry Co. v. *Kentucky*, 188 U. S. 385, loc. cit. 396:

"While the mode, form, and extent of taxation are, speaking generally, limited only by the wisdom of the legislature, that power is limited by a principle inhering in the very nature of constitutional government, namely, that the taxation imposed must have relation to a subject within the jurisdiction of the taxing government."

Loc. cit. 397: "A state can no more subject to its power a single person or a single article of property whose residence or legal situs is in another state, than it can subject all the citizens or all the property of such other state to its power. Cooley on Taxation, 2d ed. p. 159."

It was there held the intangible personal property (called incorporeal hereditament) had its legal situs in Indiana in the form of a franchise and could not be taxed in Kentucky.

The law of this country has been well settled that it is a violation of due process for two states to impose transfer or inheritance tax upon the same tangible property, holding that the situs of tangible property is the state wherein it is permanently kept and that the fiction of taxing under the *universitas* may not be applied.

Frick v. *Pennsylvania*, 268 U. S. 473.

Likewise intangibles may be burdened with succession tax but once and that the situs of the thing to be taxed.

Farmers' Loan & Trust Co. v. *State of Minnesota*, 280 U. S. 204, loc. cit. 212:

> "A very large part of the country's wealth is invested in negotiable securities whose protection against discrimination, unjust and oppressive taxation, is matter of the greatest moment. • • • Taxation is an intensely practical matter, and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences. We have determined that in general intangibles may be properly taxed at the domicile of their owner, and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles. The difference between the two things, although obvious enough, seems insufficient to justify the harsh and oppressive discrimination against intangibles contended for on behalf of Minnesota."

POINT D.

Presence of the Evidences of Debt in Missouri.

Pursuing the fundamental principles, the mere physical presence of evidences of debt, such as a note, bond or accounting books of a bank, in a state not of the domicile does not affect the rule. The cases seem quite well agreed that a debt intangible in form cannot acquire a situs merely for the purpose of taxation. In other words, the courts have never gone to the extent of arbitrarily saying that the situs of the intangible property is at the state of the domicile but that we will create for the purpose of taxation only another situs in another state not of the domicile.

Blodgett v. *Silberman*, 277 U. S. 1, loc. cit. 9:

"At common law the maxim '*mobilia sequunter personam*' applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and in England, in so far as it relates to intangible property, including choses in action, without regard to *whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the state of the domicile or elsewhere*, and is so fully sustained by cases in this and other courts, that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not" (italics ours).

Mindful that under the more recent holdings the measure of jurisdiction of a state is not unalike for property tax and transfer tax as shown above in this brief we refer for further authority to a property tax case of this court.

In the case of *Buck* v. *Beach*, 206 U. S. 392; the State of Indiana sought to place a direct property tax upon promissory notes owned by a nonresident, and the Supreme Court of the State of Indiana held same taxable in Indiana on the theory that the situs of the property was in Indiana because of the physical presence in Indiana of the notes themselves. In the course of its opinion this court said:

Buck v. *Beach*, 206 U. S. 392, loc. cit. 408.

"The presence of the notes in Indiana formed no bar to the right, if it otherwise existed, to taxing the debts evidenced by the notes in Ohio. It does, however, tend to prevent the taxation in one state of property in the shape of debts not existing there, and which, if so taxed, would make

double taxation almost sure, which is certainly not to be desired, and ought, wherever possible, to be prevented. For the reason that, as the assessment in this case was made upon property which was never within the jurisdiction of the State of Indiana, the state had no power to tax it, and the enforcement of such a tax would be the taking of property without due process of law."

No Question of Business Situs Is Here Involved.

There is no Missouri business situs involved in relation to the intangible property of Carrie Pool Baldwin. Nor does the decision of the Supreme Court of Missouri below, hold that there is a business situs in Missouri, notwithstanding its comment of doubt. This court, therefore, does not have such question before it. Slight reference might be made however to the unmerited comment of the Supreme Court of Missouri on a business situs. The appellants here prevailed in the trial court. The record was prepared and brought from the trial court to the Supreme Court of Missouri by the appellee here, the State of Missouri. Certain evidences of debt were found in safety deposit box in a Missouri bank, further the record evidence is barren. The State of Missouri did not show, permit a showing or create and bring up a record showing the duration or circumstances of the papers found in the strong box, and no court could find from the facts in the record that a business situs was established or existing. May a court presume matters not in the record.

The consideration of a business situs, of course, may not be used to enlarge restriction of the Federal

Constitution. That is to say, if a business situs is actually established it must be under such circumstances as relieve the property of the burden of succession tax in the domiciliary state. Otherwise due process of law would be denied. There was no business situs here nor was there any element of such.

A business situs arises only where "the owner has caused them (choses in action) to become integral parts of a localized business."

Farmers' Loan & Trust Co. v. *State of Minnesota,* 280 U. S. 204, loc. cit. 210.

Examples of such instances are where foreign corporations or individuals have a business agent or agency in the state seeking to tax and there loan and collect money or transact business in and through the established agency. It partakes more of a tax on the capital of a business situs.

In Relation to Inventory in Missouri.

The Missouri statute, Section 568 (Appendix p. 39) provides that any banking institution or safety deposit box company must give notice to the state treasurer before permitting the removal of the papers from the lock box of any deceased. Thereupon all evidences of debt, be they letters acknowledging indebtedness, notes, bonds or whatsoever, are, under penalty imposed upon the institution, forced to be reported to the state treasurer, who is the receiving officer for inheritance tax, Section 565 (Appendix p. 38). This is true of course even though the evidence of debt may not belong to the deceased but to some-

one else. Sections 571 and 573 (Appendix p. 41) provide that the appraiser appointed shall, through the probate court, report the property listed to the state treasurer. Section 564 (Appendix p. 38) makes the administrator personally liable for inheritance tax. If the administrator therefore paid the tax on intangible personal property of a nonresident decedent, and it was not legally taxable, he would then be liable to the foreign executor. On the other hand, if the Missouri administrator declined to pay the tax and made distribution and the State of Missouri should by suit or claim thereafter pursue the administrator for the tax on the intangible personal property of a nonresident decedent and recover, the administrator personally would be liable therefor.

Hence it was for the protection of the administrator pending construction of the statute that the intangible property became inventoried. The objection to such listing of the intangible property in Missouri was registered on the part of the heir and executor of the will in Illinois by the motion filed in the probate court and refiled in the Circuit Court, to compel the administrator to surrender up the evidences of the debts. The provisions of Section 568 (Appendix p. 39), requiring notice to the state treasurer, are designed to reach and find *taxable* property and not to make taxable such property as is otherwise *not* subject to transfer tax.

The point made by the Supreme Court of Missouri that the intangible property of the Carrie Pool Baldwin estate is taxable in Missouri, because reported

to the state treasurer and inventoried there, is not conceived in logic. For if it only became taxable upon report and inventory Missouri had no jurisdiction theretofore. If such were the law, then by the aid of its statute requiring report of all evidences of debt found in lock box of a decedent in Missouri, the state would make property taxable which without the statute would not be taxable. This effort by means of statute and holding of the Supreme Court of Missouri to tax property and persons beyond its jurisdiction takes its place as a new state theory advanced, to be added to the many heretofore state devised theories, to reach beyond its borders for taxing purposes contrary to limitations of the Fourteenth Amendment of the Federal Constitution.

Fact That Note Secured by Mortgage on Land in Missouri Does Not Alter the Status or Situs of the Debt.

It is not the purpose to raise a question foreign to the issues made by the opinion of the Missouri Supreme Court below. Notwithstanding this court in its consideration of the case at bar may desire reference to the status of a land mortgage security in Missouri.

No division of land interest between the mortgagor and the mortgagee is created by the execution of a mortgage security in Missouri. The lien is a mere incident that follows the debt as a shadow.

The law of Missouri on that question is reannounced in the citation and quotation below and there has been no qualification of the rule since that time though on several occasions reannouned.

Missouri Real Estate & Loan Co. v. *Gibson,* 282 Mo. 75 loc. cit. 79 (1920):

> "Notwithstanding a few attributes that still inhere in it as a result of its common-law origin, a mortgage, or deed of trust in the nature of a mortgage, given on land to secure the payment of a debt, is now regarded in this state as being, in its last analysis, a lien and nothing more. *Dickerson* v. *Bridges,* 147 Mo. 235, 244; *Terminal Ice & Power Co.* v. *Ins. Co.,* 196 Mo. App. 241, 248. So viewed, it is neither an estate in land, nor a right to any beneficial interest therein. It is neither *jus in re* nor *jus ad rem.* It is merely the right to have the debt, if not otherwise paid, satisfied out of the land. The debt is the essence of the mortgage, the lien a mere incident that follows it as a shadow (*Lipscomb* v. *Talbott,* 243 Mo. 1, 31), and which, in and of itself, apart from the debt, is so intangible that it cannot be assigned (*Thayer* v. *Campbell,* 9 Mo. 280), nor levied upon or sold on execution (19 R. C. L. 311, Sec. 87)."

Hence no question can arise here concerning the decedent having an interest or share in the land with the mortgagor by reason of mortgage securing indebtedness.

As bearing upon this aspect of the case, citation and quotation is made from the early case of *Kirtland* v. *Hotchkiss, infra,* which is cited with approval in *Blodgett* v. *Silberman,* 277 U. S. 1.

Kirtland v. *Hotchkiss,* 100 U. S. 491, loc. cit. 498:

> "The question does not seem to us to be very difficult of solution. The creditor, it is conceded, is a permanent resident within the jurisdiction of the state imposing the tax. The debt is property in his hands constituting a portion of his wealth, from which he is under the highest obligation, in

common with his fellow-citizens of the same state, to contribute for the support of the government whose protection he enjoys.

"That debt, although a species of intangible property, may, for purposes of taxation, if not for all others, be regarded as situated at the domicile of the creditor. It is none the less property because its amount and maturity are set forth in a bond. That bond, wherever actually held or deposited, is only evidence of the debt, and if destroyed, the debt—the right to demand payment of the money loaned, with the stipulated interest—remains. Nor is the locality of the debt, for the purposes of taxation, affected by the fact that it is secured by mortgage upon real estate situated in Illinois. The mortgage is but a security for the debt, and, as held in State Tax on Foreign-Held Bonds (*supra*), the right of the creditor 'to proceed against the property mortgaged, upon a given contingency, to enforce by its sale the payment of his demand—has no locality independent of the party in whom it resides. It may undoubtedly be taxed by the state when held by a resident therein,' etc., Cooley on Taxation, 15, 63, 134, 270. The debt then having its situs at the creditor's residence, both he and it are, for the purposes of taxation, within the jurisdiction of the state."

No other decisions of this court are found dealing with the point of a land mortgage security as affecting the situs of a debt so secured, where, under the state law, the mortgage was a lien only contrary to a situation where the mortgagee acquired an interest in the land itself.

There are state court decisions decided prior to *Farmers' Loan and Trust Co.* v. *State of Minnesota*, 280 U. S. 204, that follow *Blackstone* v. *Miller*, 188 U. S. 189, but though following Blackstone vs. Miller, dif-

ficulty has been there experienced in practical application that has in many instances driven the state courts to abandon their mortgage situs theory where a state not of the domicile sought to use it to tax intangible property beyond its jurisdiction.

Examples of this character arise where a mortgage to secure a debt is given on lands in more than one state. If it may be said that the situs of a land mortgage secured debt is where the land lies, it is as true where the land lies in several states as where the land lies all in one state. Following this to its conclusion, a railroad mortgage would fix the situs in perhaps ten states or more.

As stated above, state courts, though making effort to follow Blackstone vs. Miller, were not able to claim situs under the land mortgage theory where the land was situated in more than one state.

In re Ward's Estate;
Chadwick v. *State,* (1916) 133 Minn. 117.
McLaughlin v. *Cluff,* (1925) 66 Utah 245.

Another practical difficulty might be suggested. Assuming that the mortgage situs theory prevailed, A is mortgagor in Missouri, and B is mortgagee, a non-resident, hence the situs of the debt in Missouri because of land mortgage; and assume thereupon A suffered the land to be sold for non-payment of taxes and C became the purchaser of course clear of incumbrance; B still has his note as creditor and if A is solvent has property rights; may it be said that the situs transfers from one state to another because of

tax sale; then if A were permitted to redeem under the law and did so, would the situs return to Missouri.

The test of a profound principle of law is found in its application. It seems apparent that intangible personal property may have but one situs, and that is with the creditor.

It is submitted that this question has, however, been decided and determined by this court in the year 1928, in the case of *Blodgett* v. *Silberman*, 277 U. S. 1, where this court expressly approved the language of *Kirtland* v. *Hotchkiss*, 100 U. S. 491, and quotes therefrom, to-wit: "nor is the debt, for the purpose of taxation, affected by the fact that it is secured by mortgage upon real estate situated in Illinois. • • • The debt, then, having its situs at the creditor's residence, both he and it are, for the purpose of taxation, within the jurisdiction of the state."

Conclusion.

It is therefore respectfully submitted that the judgment appealed from should be reversed and the cause remanded to the Missouri Supreme Court below, to the end that the intangible personal property of the decedent domiciled in Illinois, and heretofore taxed for succession in Illinois, may be relieved of succession tax in Missouri, for the reason that the judgment of the Supreme Court of Missouri sustaining Section 558, of the Revised Statutes of Missouri, 1919, and the provisions thereof, undertaking to tax property beyond the

jurisdiction of Missouri, is in conflict with and repugnant to the Fourteenth Amendment of the Federal Constitution, and violates due process of law.

JOHN F. GARNER,
Counsel for Appellant.

HARRY CARSTARPHEN,
Of Counsel.

APPENDIX.

(A revision of the Missouri Statutes was made by the 1929 General Assembly of Missouri, but it is not yet published and distributed.)

The following citations of Missouri Statutes are by section number of the 1919 Revised Statutes of Missouri, with reference to the Session Acts where amendments have been made and published in the Session Acts by the biennial sessions of the General Assembly.

Section 558, Revised Statutes of Missouri, 1919, Chapter 1, Article XXI:

"A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed or any interest therein or income therefrom, in trust or otherwise, to persons, institutions, associations, or corporation, not hereinafter exempted, in the following cases: When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state. When the transfer is by will, or intestate law of property within the state or within the jurisdiction of the state and decedent was a non-resident of the state at the time of his death. When the transfer is made by a resident or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift made in contemplation of the death of grantor, vendor or donor, or intending to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift made within two years prior to the death of grantor, vendor or donor, of a material part of

his estate or in the nature of a final disposition or distribution thereof without an adequate valuable consideration shall be construed to have been made in contemplation of death within the meaning of this section. Such tax shall be imposed when any person, association, institution or corporation actually comes into the possession and enjoyment of the property, interest therein, or income therefrom, whether the transfer thereof is made before or after the passage of this act: Provided, that property which is actually vested in such persons or corporations before this act takes effect shall not be subject to the tax."

Section 564, Revised Statutes of Missouri, 1919, Chapter 1, Article XXI:

"All executors, administrators and trustees of any estate, property, interest therein, or income therefrom so transferred shall be personally liable for such tax and interest until they are paid. Any executor, administrator or trustee shall have full power to sell so much of the property of decedent as will enable him to pay said tax in the same manner as they may be enabled to do by law for the payment of the debts of the estate and the interest of said tax shall be paid as hereinafter directed."

Section 565, Revised Statutes of Missouri, 1919, Chapter 1, Article XXI, amended 1921, Session Acts 1921, page 113:

"Every sum of money retained by any executor, administrator, or trustee or paid into his hands for any tax on any property or derived from any source whatever for the payment of any such taxes shall be paid by him within thirty days thereafter into the state treasury except two and one-half per cent of such tax which he shall pay to the probate judge for his fees. Upon the payment to the state treasurer of any taxes due under this

act, such treasurer shall issue a receipt therefor in triplicate, one copy of which he shall deliver to the person paying said tax and the original and one copy of which he shall immediately send to the state auditor whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof and said auditor shall retain one of said receipts and the other he shall countersign and seal with the seal of his office and immediately transmit to the clerk of the court fixing such tax and no executor, administrator, or trustee shall be entitled to credit in his accounts or be discharged from liability from said tax, nor shall said estate be distributed or closed unless a receipt so sealed and countersigned by the state auditor or a copy thereof duly certified by him shall have been filed with the court."

Section 568, Revised Statutes of Missouri, 1919, Chapter 1, Article XXI:

"If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligation in this state standing in the name of the decedent or in trust for a decedent liable for any such tax, the tax shall be paid to the state treasurer on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who is a resident or non-resident, or belonging to or standing in the joint names of such a decedent and one or more persons, including the shares or capital stock or other interest in a safe deposit company, trust company, corporation, bank or other institution making a delivery or transfer herein provided, shall deliver or transfer the same to the executor, administrator, or legal representative of said decedent or the survivor or survivors when in the joint name of a decedent and

one or more persons or upon their order or request unless notice of the time and place of such intended delivery or transfer be served upon the state treasurer and attorney general at least ten days prior to said delivery or transfer; nor shall any safe deposit company, trust company, corporation, bank or other institution, person or persons, deliver or transfer any securities, deposits, or other assets belonging to or standing in the name of decedent or belong to or standing in the joint names of a decedent and one or more persons, including the shares of capital stock of or any other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits, or other assets, including the shares of capital stock or other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer under the provisions of this article unless the state treasurer and the attorney general consent thereto in writing. And it shall be lawful for the state treasurer, together with the attorney general, personally or by representative, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion or amount to pay such tax or interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits, or other assets, including the charges of capital stock of, or other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto a penalty of one thousand dollars; and the payment of such

tax and interest therein or the penalty above prescribed or both may be enforced in an action brought by the state treasurer in any court of competent jurisdiction."

Section 571, Revised Statutes of Missouri, 1919, Chapter 1, Article XXI, amended 1921, Session Acts 1921, page 116:

"The appraiser shall appraise all property, estate, assets, interest or income at its clear market value and he is hereby authorized to issue subpoenas and compel the attendance before him of witnesses and the production of books, records, documents, papers and all other material evidence, to administer oaths and to take the testimony of all witnesses under oath. He shall make report of his appraisement to the court in writing and shall return the testimony of the witnesses and all other evidence and such other facts in relation thereto as the court may by its order require, and such report shall be made within twenty days after the appointment of such appraiser, unless the court, for good and sufficient cause, by order gives such appraiser further time in which to report: Provided, when the estate consists of personal property only, the prosecuting attorney may, with the consent of the state treasurer, agree with the parties liable to pay any tax upon the amount of the same, and the court, if it approves such agreement, shall enter judgment accordingly and no appraiser shall be appointed."

Section 573, Revised Statutes of Missouri, 1919, Chapter 1, Article XXI:

"The report of the appraiser shall be filed with the court in duplicate, one of which duplicate copies, together with the certificate of the court or clerk shall be forwarded to the state treasurer within five days after the amount of said tax shall be fixed."

FILE COPY

APR

CHARLES E.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 417.

THOMAS A. BALDWIN, Thomas A. Baldwin, Executor of of the Will of Carrie Pool Baldwin, and Harry Carstarphen, Administrator of the Estate of Carrie I. Baldwin, With Will Annexed, *Appellants*,

vs.

STATE OF MISSOURI, *Appellee*.

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF MISSOURI.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR AND APPELLEE.

STRATTON SHARTEL,
Attorney-General of Missouri.
LIEUTELLUS CUNNINGHAM,
Assistant Attorney-General.
A. M. MEYER,
Assistant Attorney-General.
Counsel for Appellee.

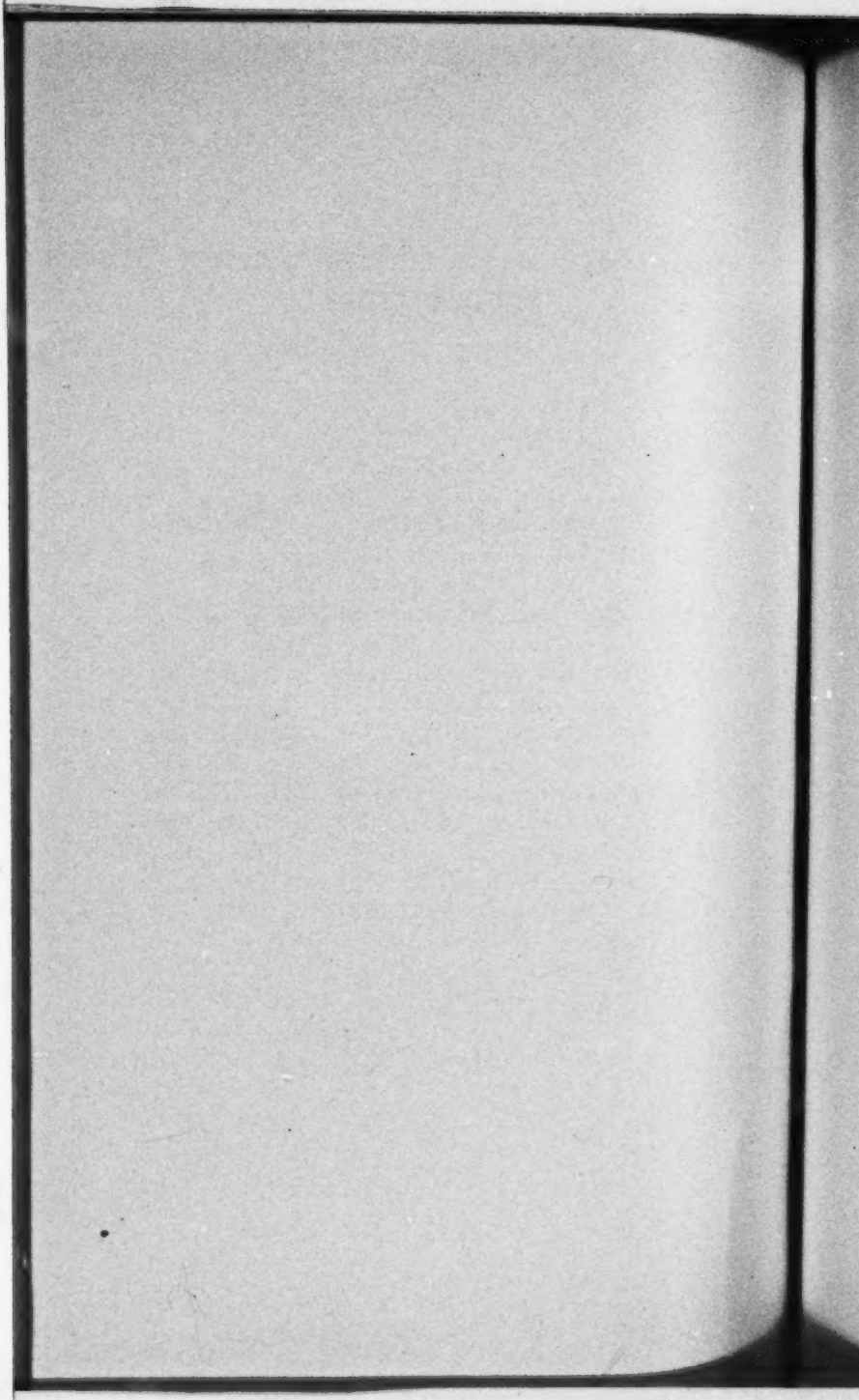
SUBJECT INDEX.

Page

Statement of Facts..... 1
Summary of Argument..... 3
Argument..... 6
Conclusion..... 11
Opinion in Supreme Court of Missouri—19 South Western (2nd) 732..... 4

Cases cited.

Blackstone vs. Miller, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439.....3, 4, 6
Farmers' Loan and Trust Company vs. Minnesota, 280 U. S. 204, 50 S. Ct. 98..... 3
Frick vs. Pennsylvania, 268 U. S. 473, 45 S. Ct. 603, 69 L. Ed. 1058..... 8
In re Merriam's Estate, 147 Mich. 630, 111 N. W. 196, —L. R. A. (N. S.) 1104, 118 Am. St. Rep. 561, 11 Ann. Cas. 119..... 4
State vs. Baldwin's Estate, 19 S. W. (2nd) 732..... 4
Section 558, Revised Statutes of Missouri, 1919..... 5



IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 417.

THOMAS A. BALDWIN, Thomas A. Baldwin, Executor of the Will of Carrie Pool Baldwin, and Harry Carstarphen, Administrator of the Estate of Carrie Pool Baldwin, With Will Annexed, *Appellants*,

vs.

STATE OF MISSOURI, *Appellee*.

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF MISSOURI.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR AND APPELLEE.

STATEMENT.

Carrie Pool Baldwin died testate in the State of Illinois. Her will was probated in that state and her son and only heir was the only legatee under the will. A portion of the estate consisted of Missouri real estate. Concerning the tax measured by this portion of the estate there is no controversy. The remaining items of the estate in Missouri were of three classes, with amounts as follows:

United States Government Bonds (Reg.)..	$2,000.00
Bank Deposits.....	$17,015.75
Notes.....	$66,882.34

All of these notes were secured by mortgages on Missouri real estate except items Nos. 5, 20, 21, 26 and 29 of the inventory, totaling $8,513.50. The notes so secured were therefore $58,368.84 in total amount.

Upon these items the State of Missouri assessed a succession tax measured by the value thereof, and that tax was sustained by the Supreme Court of Missouri.

There is no evidence that any of these items were merely temporarily in Missouri. In fact the record shows that they were permanently and indefinitely located there.

SUMMARY OF ARGUMENT.

I.

A.

Succession and inheritance taxes may be measured by the value of bank deposits located within the state, and collected against the estates of non-resident decedents without violating the provisions of the Federal Constitution or the 14th Amendment thereto.

Blackstone vs. Miller, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439.

B.

This case, so far as it relates to a succession tax measured by the bank deposits in Missouri is distinguishable from the case of Farmer's Loan and Trust Company vs. Minnesota, cited *post*, and it is not necessarily within the principle criticized in that case as having formed the basis of the decision in the case of Blackstone vs. Miller, *supra*.

To sustain the tax in this case it is not necessary to say that a chose in action necessarily has a situs for taxation purposes at the domicile of the debtor, nor is it necessary in order to sustain the tax, to say that the Fourteenth Amendment does not prevent the taxation of the same property by different states upon inconsistent principles.

Farmer's Loan and Trust Co. vs. Minnesota, 50 S. Ct. 98, 280 U. S. 204.

II.

A.

Succession and inheritance taxes may be measured by the value of United States Government Bonds of a non-resident decedent where the same are found within the jurisdiction of the state levying the tax.

Blackstone vs. Miller, *supra*.

B.

On this phase the instant case differs from the case of Farmer's Loan and Trust Company vs. Minnesota (*supra*) in that here the evidences of debt were actually present in Missouri.

III.

A.

Succession and inheritance taxes may be measured by the value of promissory notes secured by mortgages on Missouri real estate and owed by residents of Missouri where the notes and securities were in Missouri, even though the same belonged to the estate of a non-resident decedent.

In re Merriam's Estate, 147 Mich. 630, 111 N. W. 196 —L. R. A. (N. S.) 1104, 118 Am. St. Rep. 561, 11 Ann. Cas. 119;

Blackstone vs. Miller, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439.

B.

On this phase also, the instant case is distinguishable from the Minnesota case, *supra*, and to sustain the tax here would not conflict with the principles upon which that case was decided.

IV.

As to the unsecured notes, which were present in Missouri and are sought to be taxed, they probably stand on the same footing as the bank deposits treated under Point one, save that the record does not disclose that any evidence of indebtedness issued by the bank to the decedent were found in Missouri.

V.

All of the items treated under Points I, II, III and IV are within the taxing statute as construed by the Supreme Court of Missouri.

State vs. Baldwin's Estate, 19 S. W. (2nd) 732.

The statute which imposes the tax is Section 558 of the Revised Statutes of Missouri for 1919, and reads as follows:

> "Sec. 558. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed or any interest therein or income therefrom, in trust or otherwise, to persons, institutions, associations, or corporation, not hereinafter exempted, in the following cases: When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state. When the transfer is by will, or intestate law of property within the state or within the jurisdiction of the state and decedent was a non-resident of the state at the time of his death. When the transfer is made by a resident or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift made in contemplation of the death of grantor, vendor or donor, or intending to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift made within two years prior to the death of grantor, vendor or donor, of a material part of his estate or in the nature of a final disposition or distribution thereof without an adequate valuable consideration shall be construed to have been made in contemplation of death within the meaning of this section. Such tax shall be imposed when any person, association, institution or corporation actually comes into the possession and enjoyment of the property, interest therein, or income therefrom, whether the transfer thereof is made before or after the passage of this act: *Provided*, that property which is actually vested in such persons or corporations before this act takes effect shall not be subject to the tax."

ARGUMENT.

The case of Blackstone vs. Miller, 188 U. S. 189, 23 S. Ct. 277, 47 L. Ed. 439, was, to some extent, relied upon by the Supreme Court of Missouri in sustaining the tax measured by each of the classes of items treated in the Summary. On its facts, that case presents an exact parallel only to the facts treated under Point I, above. While certain language in the opinion in the Minnesota case is inconsistent with the result in the Blackstone case, we do not believe that the actual holdings in the two cases are inconsistent. In fact, it is respectfully submitted that the position of the State of Missouri in the instant case is analogous to the position of New York in the Minnesota case rather than to the position of Minnesota itself in that case.

We submit that there is a principle which underlies all theories of taxation in Anglo-Saxon jurisprudence, which has not been fully discussed by this court with reference to this class of cases, which is decisive of this case, and in the application of which the results in the Blackstone and Minnesota cases are and should be reconciled.

We refer not only to the proposition that taxation of or measured by property should be based upon and germane to some right, duty or obligation which the sovereign levying the tax has with respect to the property or right taxed, but also to the principle that the tax should be proportioned to and germane to some benefit which the subject of the tax enjoys by reason of the existence of the sovereignty and the maintenance of its institutions.

If A. lives in Illinois and has his property there, he should make all of his contribution to the cost of government to that government which protects him in the enjoyment of that property. He should pay taxes which go to sustain the machinery by which he exercises his franchise

to the jurisdiction which permits him to vote. He should pay his automobile license fees to the state where he keeps and operates the automobile. He should pay his gasoline taxes to the state upon whose highways he consumes the gasoline, since that state alone is under a peculiar duty to maintain those highways.

An economic interest may receive benefits from the maintenance of two governments. The relative amount of security, protection and supervision afforded by each may and does vary. As a practical matter there may be and is a point where the benefits afforded by the one state are so small in the nature of things that the relationship is "too attenuated to constitute any reasonable basis" for jurisdiction to tax, as in the Minnesota case. At least it becomes so small that the imposition of the *same* tax upon that interest which the same jurisdiction imposes upon interests receiving *all* the benefits of government from it, offends the sense of justice and fair dealing. To phrase the matter another way, the double taxation which offends the sense of justice is that which results finally in the imposition of twice as much taxes as other property pays for the same benefits. Such a situation, while we do not believe it is within a fair construction of the Fourteenth amendment does seem improper. But it seems equally unjust or more so to say that the jurisdiction which gives the least benefits should receive all of the *fair* share of the cost of government as contributed by that property.

In the Minnesota case all the benefits attaching to ownership of the property were secured to it by the laws of New York, except the continued willingness to pay the debt, which was assured by common honesty and the Constitution of the United States more than by any law of Minnesota, that willingness having already matured into a contract to pay.

In the instant case every substantial benefit which the property received from the existence of government, existed and continued by virtue of the law of Missouri except the

bare right of the decedent to own the choses in action constituting the Missouri estate.

As a matter of strict logic it seems to us that there are cases where a state, upon this theory, would be justified in levying upon property not solely benefited by its laws and institutions a tax equal to seventy-five, fifty, twenty-five or one per centum of the amount of taxes levied upon similar property which derived 100% of the total benefits of government from the same jurisdiction. The corrolary proposition is that some other state or states would be entitled to the remainder of whatever tax was economically justifiable.

No reason is perceived why the legislatures of the states could not make reasonable legislative findings of the proportionate amount of benefits enjoyed by property of the character treated in this record, compared with other property wholly subject to and protected by their respective laws and institutions, and prorate the tax accordingly.

No reason is perceived why jurisdiction to tax should be regarded as either whole or non-existent. It is not necessary, in order to prevent the kind of discrimination aimed at in the Minnesota case, to deny the power of taxation altogether as the only alternative. Upon a similar theme but in another connection, one of the learned Justices of this Court said: "The power to tax is not the power to destroy while this court sits. This court can prevent an attempt to discriminate or otherwise go too far without wholly destroying the power to tax."

Of course, in the nature of tangible property it could not exist in a multiple of close relationships to different jurisdictions in the same way that intangibles can do so, except under extraordinary circumstances not now comprehended. Thus we submit that the principle for which we contend extends to and conforms to the ruling in the case of Frick vs. Pennsylvania, 268 U. S. 473, 45 S. C. 603, 69 L. Ed. 1058, and supporting cases.

No doubt a distinction must be made between the theoretical and the practical, even assuming that the theory advanced is logically sound. Perhaps it is impracticable to attempt to prorate the tax in proportion to the benefits, but if this is true at least the power to tax ought to be based upon benefits rather than upon a legal fiction already found to be inapplicable to tangible movables and which was originally devised for a purpose having nothing to do with taxation. Certainly the principle for which we contend is the basis of the ruling in the Frick case, rather than the fiction of law, and no reason is perceived why it should not be extended to intangibles if applicable in practice.

If for any reason, practical or logical, the court adheres to the view that not more than one jurisdiction may tax the same economic interest, at least the state which affords the greatest number of benefits to the particular subject of the tax ought to be the one which is permitted to exercise the power. Fixing the taxable situs at the domicile of the decedent makes the state where the active substantial benefits of government are derived dependent upon transient circumstance or the caprice of the owner for revenue to support the institutions which confer those benefits.

The State of Missouri maintains a probate court system for the administration of estates. Whatever the figure may be, *some definite, ascertainable proportion of the total business handled through that system arises from the intangible personality of non-resident decedents.* Whatever that proportion may be it seems unfair to compel Missouri to permit the settlement of foreign estates therein and pay the cost attributable thereto without any "*quid pro quo.*"

In order to protect the bank deposits of the decedent, Missouri maintains a Department for the supervision and liquidation of banks. It maintains sheriffs and police and prosecuting officers to apprehend and punish the felon who might steal or embezzle those funds. It maintains courts in which the felon may be tried and machinery for extradition should he flee the jurisdiction, and a prison in which he would be confined if convicted.

The same observations apply had the notes or bonds in question been stolen or embezzled from the safe deposit boxes in which they were lodged. Missouri maintained recording officers where the mortgages securing the notes might be recorded and titles traced and assured, courts where suits must have been brought upon the notes. The very fire departments were necessary to the security and enjoyment of the rights of property of the decedent. As a practical matter, loss of the evidences of the choses might mean the loss of the debts, since debts cannot be collected from an unwilling debtor unless their existence is established by a preponderance of the evidence. These benefits could not be denied to a citizen of another state, and if the state is compelled to support these institutions for non-residents without recompense, then it may be well said that every one now has equal protection of the laws and is entitled to due process except the people of the states.

None of these bank deposits could have been lost in a bank failure in Illinois. None of the money, notes or bonds could have been stolen, embezzled or destroyed by fire in Illinois. Not an item of these intangibles could have been reduced to a chose in possession by a suit brought in Illinois or a demand made there. No criminal trespassing against the property could have been prosecuted in Illinois.

It has been said that the tax in question is a tax upon the *transfer* rather than upon the property. The majority opinion in the Minnesota case seems to regard this distinction as of no moment. After all it is the property which is transferred, not the decedent. It is the property which descends, and not the domicile. But if Missouri had no statute, as it has no constitutional provision, permitting the devolution of property, or if no heirs or legatees claimed the same, it would be the property which would escheat, and we submit that it is because of this last fact that the tax is a tax upon the transfer and that a real basis for the distinction exists which probably does not exist with respect to any other kind of taxes.

CONCLUSION.

We respectfully submit that the judgment of the Supreme Court of Missouri should be affirmed.

STRATTON SHARTEL,
Attorney-General,
L. CUNNINGHAM,
Assistant Attorney-General,
A. M. MEYER,
Assistant Attorney-General
of Missouri,
Counsel for Appellee.

SUPREME COURT OF THE UNITED STATES.

No. 417.—October Term, 1929.

Thomas A. Baldwin, Thomas A. Baldwin, Executor of the Will of Carrie Pool Baldwin, et al., etc., Plaintiffs in Error and Appellants,
vs.
State of Missouri.

In Error to and Appeal from the Supreme Court of the State of Missouri.

[May 26, 1930.]

Mr. Justice McReynolds delivered the opinion of the Court.

The validity of Sec. 558, R. S. of Missouri, 1919, was duly challenged in the court below; by the judgment there the rights of the parties were finally determined; the cause is properly here on appeal.

While a resident of Quincy, Adams County, Illinois, Carrie Pool Baldwin died, October 4, 1926. By will she left all her property to Thomas A. Baldwin, her son, a resident of the same place, and appointed him sole executor. The will was duly probated at her residence and under the statute of Illinois an inheritance tax was there laid upon the value of all her intangible personalty, wherever situated.

Ancillary letters of administration with the will annexed issued out of the probate court of Lewis County, Missouri, to Harry Carstarphen, October 22, 1926. A report to that court revealed that at the time of her death Mrs. Baldwin owned real estate in Missouri; credits for cash deposited with two or more banks located there; also certain coupon bonds issued by the United States and sundry promissory notes which were then physically within that State. Most of these notes were executed by citizens of Missouri and the larger part were secured by liens upon lands lying therein.

Under Sec. 558, R. S. 1919,* (copied in margin) the State of Missouri demanded transfer or inheritance taxes reckoned upon the value of all the above described property. No denial of this claim was made in respect of the real estate; but as to the personalty it was resisted upon the ground that the property was not within the jurisdiction of the State for taxation purposes and to enforce the demand would violate the due process clause of the Fourteenth Amendment.

The Lewis County Circuit Court declared the transfer of the personal property not subject to taxation; the Supreme Court reached a different conclusion and directed payment.

It does not appear and is not claimed that either the decedent or her son ever resided in Missouri. The record discloses nothing tending to show that the personal property had been given a business situs in that State.

Among other things, the Supreme Court said—

> "In recent cases we have held for the purpose of property tax that the situs of a credit is the domicile of the creditor
>
> . . . .

*Section 558, Revised Statutes of Missouri, 1919, Chapter 1, Article XXI:

"A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed or any interest therein or income therefrom, in trust or otherwise, to persons, institutions, associations, or corporation, not hereinafter exempted, in the following cases: When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state. When the transfer is by will, or intestate law of property within the state or within the jurisdiction of the state and decedent was a non-resident of the state at the time of his death. When the transfer is made by a resident or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift made in contemplation of the death of grantor, vendor or donor, or intending to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift made within two years prior to the death of grantor, vendor or donor, of a material part of his estate or in the nature of a final disposition or distribution thereof without an adequate valuable consideration shall be construed to have been made in contemplation of death within the meaning of this section. Such tax shall be imposed when any person, association, institution or corporation actually comes into the possession and enjoyment of the property, interest therein, or income therefrom, whether the transfer thereof is made before or after the passage of this act; Provided, that property which is actually vested in such persons or corporations before this act takes effect shall not be subject to the tax."

"If we could apply the same rule to an inheritance tax we might have less difficulty in disposing of this case. The inheritance tax statute, Article XXI, Ch. 1, R. S. 1919, provides an entirely independent method of ascertaining the property subject to inheritance tax from that applicable for general tax. The definition of the term 'property' in the last section, 589, of that Article, makes inapplicable any definition relating to general property tax. An inheritance tax is not a property tax, but an excise tax, or a tax upon succession. (In re Zooks Estate, 296 S. W. 1, c. 780, and cases cited.) . . .

"These notes, bonds and cash were all in the possession of the administrator in Missouri. For what purpose they were in Missouri is not shown. We cannot assume that they were in the State of Missouri for the purpose of escaping taxation in the State of Illinois. It is a reasonable inference that the cash and notes in such large quantities in Missouri, when none of it was held in Illinois, was retained in this state for the purpose of investment. They may have established a business situs in this state, in which case it would be subject to a general tax as well as the inheritance tax. . . .

"It [the personalty] possibly acquired a business situs in this state. Whether it did or not it was within the jurisdiction of the state and property subject to the transfer tax. It would have been a proper subject of inquiry by the trial court to determine how and why and under what conditions these evidences of debt were in this state, but whatever the determination of that question the property was legally within the jurisdiction of the probate court of Lewis county in this state and subject to the tax."

The challenged judgment rests upon the broad theory that a state may lay succession or inheritance taxes measured by the value of any deposits in local banks passing from a non-resident decedent; also upon the value of bonds issued by the United States and promissory notes executed by individual citizens of the state when devised by such non-resident if these bonds or notes happen to be found within the confines of the state when death occurs. The cause was decided below prior to our determination of *Farmers Loan & Trust Co.* v. *Minnesota*, 280 U. S. 204. *Blackstone* v. *Miller*, 188 U. S. 189, was cited in support of the conclusion reached. Considering *Farmers*

Loan & Trust Co. v. *Minnesota* and previous opinions there referred to, the theory upon which the court below proceeded is untenable and its judgment must be reversed.

Ordinarily, bank deposits are mere credits and for purposes of ad valorem taxation have situs at the domicile of the creditor only. The same general rule applies to negotiable bonds and notes whether secured by liens on real estate or otherwise.

In *Kirtland* v. *Hotchkiss*, 100 U. S. 491, 498, 499, this Court declared—

> "Plainly, therefore, our only duty is to inquire whether the Constitution prohibits a State from taxing, in the hands of one of its resident citizens, a debt held by him upon a resident of another State, and evidenced by the bond of the debtor, secured by deed of trust or mortgage upon real estate situated in the State in which the debtor resides.
>
> "The question does not seem to us to be very difficult of solution. The creditor, it is conceded, is a permanent resident within the jurisdiction of the State imposing the tax. The debt is property in his hands constituting a portion of his wealth, from which he is under the highest obligation, in common with his fellow-citizens of the same State, to contribute for the support of the government whose protection he enjoys.
>
> "That debt, although a species of intangible property, may, for purposes of taxation, if not for all others, be regarded as situated at the domicile of the creditor. It is none the less property because its amount and maturity are set forth in a bond. That bond, wherever actually held or deposited, is only evidence of the debt, and if destroyed, the debt—the right to demand payment of the money loaned, with the stipulated interest—remains. Nor is the debt, for the purposes of taxation, affected by the fact that it is secured by mortgage upon real estate situated in Illinois. The mortgage is but a security for the debt, and, as held in State Tax on Foreign-held Bonds, *supra* [15 Wall. 300], the right of the creditor 'to proceed against the property mortgaged, upon a given contingency, to enforce by its sale the payment of his demand, . . . has no locality independent of the party in whom it resides. It may undoubtedly be taxed by the State when held by a resi-

dent therein,' etc. Cooley on Taxation, 15, 63, 134, 270. The debt, then, having its situs at the creditor's residence, both he and it are, for the purposes of taxation, within the jurisdiction of the State."

And in *Blodgett* v. *Silberman*, 277 U. S. 1, 14—

"The question here is whether bonds, unlike other choses in action, may have a situs different from the owner's domicil such as will render their transfer taxable in the State of that situs and in only that State. We think bonds are not thus distinguishable from other choses in action. It is not enough to show that the written or printed evidence of ownership may, by the law of the State in which they are physically present, be permitted to be taken in execution or dealt with as reaching that of which they are evidence, even without the presence of the owner. While bonds often are so treated, they are nevertheless in their essence only evidences of debt. The Supreme Court of Errors expressly admits that they are choses in action. Whatever incidental qualities may be added by usage of business or by statutory provision, this characteristic remains and shows itself by the fact that their destruction physically will not destroy the debt which they represent. They are representative and not the thing itself."

We find nothing to exempt the effort to tax the transfer of the deposits in Missouri banks from the principle applied in *Farmers Loan & Trust Co.* v. *Minnesota, supra.* So far as disclosed by the record the situs of the credit was in Illinois where the depositor had her domicile. There the property interest in the credit passed under her will; and there the transfer was actually taxed, This passing was properly taxable at that place and not otherwhere.

The bonds and notes, although physically within Missouri, under our former opinions were choses in action with situs at the domicile of the creditor. At that point they too passed from the dead to the living and there this transfer was actually taxed. As they were not within Missouri for taxation purposes the transfer was not subject to her power. *Rhode Island Trust Co.* v. *Doughton*, 270 U. S. 69.

It has been suggested that should the state of the domicile be unable to enforce collection of the tax laid by it upon the transfer, then in practice all taxation thereon might be evaded. The infer-

ence seems to be that double taxation—by two states on the same transfer—should be sustained in order to prevent escape from liability in exceptional cases. We cannot assent. In *Schlesinger* v. *Wisconsin,* 270 U. S. 230, 240, a similar notion was rejected.

> "The presumption and consequent taxation are defended upon the theory that, exercising judgment and discretion, the legislature found them necessary in order to prevent evasion of inheritance taxes. That is to say, 'A' may be required to submit to an exactment forbidden by the Constitution if this seems necessary in order to enable the State readily to collect lawful charges against 'B'. Rights guaranteed by the federal Constitution are not to be so lightly treated; they are superior to this supposed necessity. The State is forbidden to deny due process of law or the equal protection of the laws for any purpose whatsoever."

If the possibility of evasion be considered from a practical standpoint, then the federal estate tax law, under which credit is only allowed where a tax is paid to the state, Sec. 1093, Title 26, U. S. C., must be given due weight. Also, the significance of the adoption of reciprocal exemption laws by most of the states, *Farmers Loan & Trust Co.* v. *Minnesota, supra,* cannot be disregarded.

Normally, as in the present instance, the state of the domicile enforces its own tax and we need not now consider the possibility of establishing a situs in another state by one who should undertake to arrange for succession there and thus defeat the collection of the death duties prescribed at his domicile.

This cause does not involve the right of a state to tax either the interest which a mortgagee as such may have in lands lying therein, or the transfer of that interest.

Reversed. The cause will be remanded to the Supreme Court of Missouri for further proceedings not inconsistent with this opinion.

SUPREME COURT OF THE UNITED STATES.

No. 417.—October Term, 1929.

Thomas A. Baldwin, Thomas A. Baldwin, Executor of the Will of Carrie Pool Baldwin, et al., etc., Plaintiffs in Error,

vs.

State of Missouri.

In Error to and Appeal from the Supreme Court of the State of Missouri.

[May 26, 1930.]

Mr. Justice Holmes.

Although this decision hardly can be called a surprise after *Farmers Loan & Trust Co.* v. *Minnesota*, 280 U. S. 204 and *Safe Deposit & Trust Co.* v. *Virginia*, 280 U. S. 83, and although I stated my views in those cases, still as the term is not over I think it legitimate to add one or two reflections to what I have said before. I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the constitutional rights of the States. As the decisions now stand I see hardly any limit but the sky to the invalidating of those rights if they happen to strike a majority of this Court as for any reason undesirable. I cannot believe that the Amendment was intended to give us carte blanche to embody our economic or moral beliefs in its prohibitions. Yet I can think of no narrower reason that seems to me to justify the present and the earlier decisions to which I have referred. Of course the words 'due process of law' if taken in their literal meaning have no application to this case; and while it is too late to deny that they have been given a much more extended and artificial signification, still we ought to remember the great caution shown by the Constitution in limiting the power of the States, and should be slow to construe the clause in the Fourteenth Amendment as committing to the Court, with no guide but the Court's own discretion, the validity of whatever laws the States may pass. In this case the bonds, notes and bank accounts were within the

power and received the protection of the State of Missouri; the notes so far as appears were within the considerations that I offered in the earlier decisions mentioned, so that logically Missouri was justified in demanding a *quid pro quo;* the practice of taxation in such circumstances I think has been ancient and widespread, and the tax was warranted by decisions of this Court. *Liverpool & London & Globe Ins. Co.* v. *Assessors for the Parish of Orleans,* 221 U. S. 346, 354, 355. *Wheeler* v. *Sohmer,* 233 U. S. 424. (I suppose that these cases and many others now join *Blackstone* v. *Miller* on the *Index Expurgatorius*—but we need an authoritative list.) It seems to me to be exceeding our powers to declare such a tax a denial of due process of law.

And what are the grounds? Simply so far as I can see that it is disagreeable to a bondowner to be taxed in two places. Very probably it might be good policy to restrict taxation to a single place, and perhaps the technical conception of domicil may be the best determinant. But it seems to me that if that result is to be reached it should be reached through understanding among the States, by uniform legislation or otherwise, not by evoking a constitutional prohibition from the void of 'due process of law' when logic, tradition and authority have united to declare the right of the State to lay the now prohibited tax.

Mr. Justice BRANDEIS and Mr. Justice STONE agree with this opinion.

SUPREME COURT OF THE UNITED STATES.

No. 417.—October Term, 1929.

Thomas A. Baldwin, Thomas A. Baldwin, Executor of the Will of Carrie Pool Baldwin, et al., etc., Plaintiffs in Error and Appellants,
vs.
State of Missouri.

In Error to and Appeal from the Supreme Court of the State of Missouri.

[May 26, 1930.]

Opinion of Mr. Justice Stone.

I agree with what Mr. Justice Holmes has said, but as I concurred, on special grounds, with the result in *Farmers Loan & Trust Company* v. *Minnesota*, 280 U. S. 204 and *Safe Deposit & Trust Company* v. *Virginia*, 280 U. S. 83, I would say a word of the application now given to those precedents. I do not think that the overturning of one conclusion in *Blackstone* v. *Miller* by those cases should be deemed to carry with it *Scottish Union & National Insurance Co.* v. *Bowland*, 196 U. S. 611, *Wheeler* v. *Sohmer*, 233 U. S. 434, upholding a tax measured by a non-resident's bonds and notes, located within the taxing state; *Savings Society* v. *Multnomah County*, 169 U. S. 421, upholding a tax measured by a non-resident's notes, secured by mortgages on land within the taxing state; or *Bristol* v. *Washington County*, 177 U. S. 133 and *Metropolitan Life Insurance Co.* v. *New Orleans*, 205 U. S. 395, upholding a tax upon intangibles having a "business situs" within the taxing state, but owned by a non-resident. These cases rest upon principles other than those applied in *Blackstone* v. *Miller* and are not dependent upon it for support.

It is true that the bonds and notes located in Missouri are choses in action, rights in which may be transferred at the domicil of the owner as well as in any other state in which he may chance to be. But the transfer made there is not completely effected without their delivery, which ordinarily can be compelled only in Missouri and

in accordance with its laws. If negotiable, which so far as appears some of them were, their transfer by delivery within Missouri could defeat the transfer made in Illinois. When secured by mortgage on real estate, the transfer of the security, which is an inseparable incident of the chose in action, *Carpenter* v. *Longan*, 16 Wall. 271, *Lipscomb* v. *Talbott*, 243 Mo. 1, 31, may be affected by the recording laws, availed of only through the recording facilities where the land is located. See *Pickett* v. *Barron*, 29 Barb. 644; *Curtis* v. *Moore*, 152 N. Y. 159, 163.

These circumstances, I think, are sufficient to give the jurisdiction which I thought lacking in *Farmers Loan & Trust Company* v. *Minnesota*, to tax the transfer in Missouri, see *Hatch* v. *Reardon*, 204 U. S. 152 and *Rogers* v. *Hennepin County*, 240 U. S. 184; to say nothing of the further fact that Missouri laws alone protect the physical notes and bonds and the security located there. Apart from the question of jurisdiction, that one must pay a tax in two places, reaching the same economic interest, with respect to which he has sought and secured the benefit of the laws in both, does not seem to me so oppressive or arbitrary as to infringe constitutional limitations.

Taxation is a practical matter and if, in the choice of the rule we adopt, we may, as the Court has said in *Farmers Loan & Trust Company* v. *Minnesota* give some consideration to its practical effect, we ought not, I think, to overturn long established rules governing the constitutional power to tax, without some consideration of the necessity and of all consequences of the change. Under the law as it has been, no one need subject himself to double taxation by keeping his securities in a state different from his domicil, or by seeking the protection of its laws for his mortgage investments. But it is a practical consideration of some moment that taxation becomes increasingly difficult if the securities of a nonresident may not be taxed where located, and where alone they may be reached, but where the courts are not open to the tax gatherers of the domicil. See *Moore* v. *Mitchell*, No. 79, decided February 24, 1930; 30 *F.* (2d) 600, *Colorado* v. *Harbeck*, 232 N. Y. 71.

It is said that the present record discloses nothing tending to show that the decedent's personal property had been given a business situs in Missouri. The Supreme Court of Missouri said: "It is a reasonable inference that the cash and notes in such large

quantities in Missouri, when none of it was held in Illinois, was retained in this state for the purpose of investment. They may have established a business situs in this state. . . ."

The burden is not on the state to establish the constitutionality of its laws, nor are we limited in supporting their constitutionality to the reasons assigned by the state court. I do not assume, from anything that has been said in this or the earlier cases, that constitutional power to tax the transfer of notes and bonds at their business situs, no longer exists. As this Court has often held, the burden rests upon him who assails a statute to establish its unconstitutionality. Upon this ambiguous record it is for the appellant to show that the stock and bonds subjected to the tax had no business situs within the taxing jurisdiction. See No. 454, *Corporation Commission of Oklahoma* v. *Lowe*, decided May 19, 1930, No. 485, *Toombs* v. *Citizens Bank of Waynesboro*, decided this day.

Mr. Justice HOLMES and Mr. Justice BRANDEIS join in this opinion.